

Access to Parliament House by lobbyists

Submission

Lobbying can give vested interests unfair advantages, be unduly secretive and serve to exclude the public from negotiations over policy. Some of these problems can be addressed by disclosing ministerial diaries, expanding the lobbyist register to include in-house lobbyists and introducing a more transparent and fit-for-purpose pass system that reflects the different reasons for visiting Parliament.

Submission

Vivien Clarke

Bill Browne

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Level 1, Endeavour House, 1 Franklin St
Canberra, ACT 2601

Tel: (02) 61300530

Email: mail@australiainstitute.org.au

Website: www.australiainstitute.org.au

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Contents

Summary.....	1
Recommendations.....	2
Introduction.....	3
What is “lobbying”?.....	3
Democratic contribution of civic engagement.....	5
The importance of parliamentary access	6
Recommendations.....	7
Sponsored passes	8
Access to federal press gallery	9
Transparency around the process of acquiring a pass	9
Recommendations.....	10
Reforming the lobbyist register.....	11
Expanding the register.....	11
Recommendation	11
Oversight.....	12
Recommendation	12
Disclosing ministerial meetings	13
Ministerial diaries	13
Representations to government	13
Recommendations.....	14
Conclusion	15

Summary

Regulation of lobbyist access and influence is patchy and not in line with community expectations. The lobbyist register is limited to third-party lobbyists, creating a false distinction between in-house and third-party lobbyists and allowing in-house lobbyists to operate without oversight. Ministerial diaries remain secret, despite the adoption of open diaries in NSW, Queensland and Victoria.

Other integrity organisations have described reforms that would bring a measure of integrity and oversight to lobbying. This submission complements those efforts by pointing out the democratic value of access to Parliament and the “lobbying” done by community organisations and civil society.

Parliament House is a place of work for ministers, parliamentarians, their staff, the Press Gallery and the parliamentary secretariat. These people are expected to serve the public good and *should* be accessible to representatives of the public – including civil society organisations, trade unions, corporations, religious bodies and community organisations. Transparency and better oversight over access to decision-makers would improve these systems, but it must not be used as an excuse to make Parliament less accessible.

While the sponsored pass system is used by corporate lobbyists, and it can afford them frequent access to ministers, parliamentarians and other key decision-makers, it is important to understand it in context. It is not exclusively used by lobbyists; in fact, some use it for press gallery access rather than meeting with parliamentarians. Others who rarely visit Parliament still depend on it because the alternative way to enter Parliament and meet with decision-makers – the unaccompanied day pass – was abolished.

RECOMMENDATIONS

1. Formalise and democratise opportunities in Parliament House that are currently ad hoc and opaque. For example, consider an open application process for the budget lockup, including publishing whose applications were accepted and the reasons for accepting them.
2. Restore unaccompanied day passes to make access to Parliament House without a sponsored pass feasible.
3. Investigate the possibility of introducing a type of unescorted pass that provides access exclusively to the press gallery and press areas of parliament (not parliamentarians' offices).
4. Publish a webpage or booklet that describes the different tiers of access to Parliament House, the requirements for each, and the number of people with each level of access.
5. Extend the lobbyist register to include in-house corporate lobbyists.
6. Parliament or an appropriate independent authority should conduct a review into how violations of the lobbyist code of conduct are enforced and possible stronger sanctions for non-compliance.
7. Disclose ministerial diaries monthly, including the purpose of the meeting.
8. Link the lobbyist register to ministerial diary entries, so the lobbyist's recent and upcoming meetings appear alongside their other information on the register.
9. Proactive disclosure of documents made as part of representations to government.

Introduction

The Australia Institute welcomes the opportunity to make a submission to the inquiry into access to Parliament House by lobbyists. This submission builds on the institute's existing research on lobbying, including regarding the disclosure of ministerial diaries and proactive disclosure of representations made by lobbyists and trade associations.¹

What is “lobbying”?

The Lobbying Code of Conduct defines lobbying activities as “communications with a Government representative in an effort to influence Government decision making”, excluding communications through formal processes (like submissions, committee hearings and public forums), grassroots and constituent engagement and responses to Government requests for information.² “Government” is used in the code to mean the executive government, but we would consider efforts to influence the Opposition and legislators on the crossbench to fall under the category of lobbying too.

Under the code, not everyone who engages in lobbying activities is considered a “lobbyist”. To be considered a lobbyist under the code, one must lobby on behalf a third-party client – in-house lobbyists are excluded. Also excluded are charitable and religious organisations; non-profit associations; organisations representing members; and members of professions whose representations to government are incidental to their work.³

In general language, the term lobbyist is used more broadly. In-house lobbyists for corporations are the most glaring omission from the official definition, but there are also not-for-profit associations that have more in common with corporations than with traditional charities. For example, trade associations and other peak industry bodies are colloquially called “lobby groups” but may operate as not-for-profit associations. A definition of lobbyist that excludes them seems too narrow.

Other jurisdictions distinguish lobbyists from others who make representations to government by the amount of time spent lobbying, which is a useful distinction. An academic who meets with parliamentarians to explain the public policy implications of their research may be “lobbying” them in those meetings, but their lobbying does not have the

¹ Browne and Walters (2023) *Securing transparency and diversity in political finance*, p 2
<https://australiainstitute.org.au/report/securing-transparency-and-diversity-in-political-finance/>; Shields and Browne (2023) *Submission: Freedom of Information Inquiry*, p 22,
<https://australiainstitute.org.au/report/submission-freedom-of-information-inquiry/>

² Attorney General's Department (n.d.) *Lobbying Code of Conduct*, “Definitions”, s 5,
<https://www.ag.gov.au/integrity/publications/lobbying-code-conduct>

³ Attorney General's Department (n.d.) *Lobbying Code of Conduct*, “Definitions”, s 5

weight of a web of relationships, favours and inside knowledge behind it as a professional lobbyist's may.

The OECD recognises that lobbying is a democratic right, can make governments better informed and gives citizens and interest groups a way to present their views to decision-makers.⁴ It identifies three problems with lobbying:

- Lobbying can also lead to unfair advantages for vested interests
- Lobbying is associated with secrecy and unfair advantage.
- Public interest is at risk when negotiations are carried out behind closed doors.⁵

In 2013, the OECD found that “lobbying is central to dwindling trust in government”. The OECD’s survey of legislators and lobbyists found that a majority of both professions agreed that transparent lobbying would increase citizens’ trust in the public decision-making process; in fact, lobbyists were more likely to agree than legislators (74% vs 68%).⁶

There is nothing wrong with some people making a profession of trying to convince decision-makers to do something, provided it is done without unfair advantages, undue secrecy and excluding the public from negotiations over policy.

⁴ OECD (2019) *Lobbying*, <https://www.oecd.org/governance/ethics/lobbying.htm>

⁵ OECD (2019) *Lobbying*

⁶ OECD (2014) *Lobbyists, governments and public trust volume 3: Lessons learned from implementing the OECD principles on transparency and integrity in lobbying: Highlights*, pp 11–13, <https://www.oecd.org/gov/ethics/lobbyists-governments-trust-vol-3-highlights.pdf>

Democratic contribution of civic engagement

Civil society groups need to be able to make representations to government to achieve their policy objectives. While these groups may have the expert knowledge, moral authority and grassroots consultation, they often lack an understanding of how politics work – not just who holds power, but what constitutes an effective approach to decision-makers.

How opportunities ebb and flow within parliamentary terms is not common knowledge. Lobbyists' understanding of the decision-making process, the policy cycle, the parliamentary calendar, parliamentary procedure and when parliamentarians are more receptive to policy proposals allows them to advocate strategically on behalf of their clients. Lobbyists can also advise those who are political outsiders on the emotional and psychological aspects of interacting with power, for example by preparing witnesses before parliamentary inquiries for how to address the parliamentarians who are questioning them and what to expect from the hearing process.

Lobbyist and writer Peter Sekules and Australian Catholic Health Care Association (later Catholic Health Australia) CEO Francis Sullivan prepared a paper for the Parliament entitled "Lobbying the Senate: Two perspectives". The perspectives remain relevant over 20 years later.

Sekules identifies exporting tertiary education as an example of policy informed by lobbying.⁷

Sullivan describes how his "lobby", the social service agencies of the churches, were alarmed that the Howard Government's introduction of fees for nursing homes lacked a sufficient subsidy for nursing homes to accept those who are financially disadvantaged. Sullivan writes:

Effective lobbying is more akin to an integrated continuum of activity, information sharing and problem solving than to the glamorised notion of heavy-handed quick fixes imposed by powerful interest groups.⁸

The lobby "pressur[ed]" the government while dealing with crossbenchers with the power to amend the legislation. Thanks to the efforts of the lobby, the Democrats brokered a deal between the Australian Catholic Health Care Association, other church groups and the

⁷ Sekules and Sullivan (1999) *Lobbying the Senate: two perspectives*,

https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/pop34/c15

⁸ Sekules and Sullivan (1999) *Lobbying the Senate: two perspectives*

Howard Government – including an increase to the subsidy for financially disadvantaged people from \$5 to \$12.⁹

Another common thread emerges from both lobbyists' discussion: the public's lack of appreciation of the parliamentary decision-making process makes them suspicious of lobbying as part of that process.¹⁰ Sullivan suggests that building community knowledge about the role of the Senate, Senate committees, and how lobbyists engage policy through these committees, is a critical piece in building trust in the lobbying process. Doing so may in turn provide the public with greater trust in political decision-making more broadly.

THE IMPORTANCE OF PARLIAMENTARY ACCESS

Parliament House is a place of work for ministers, parliamentarians, their staff, and the Press Gallery, all of whom should be accessible. Academics, policy researchers and communicators, members of civil society, representatives of religious and cultural groups, and many others quite legitimately come to Parliament House and meet with politicians, staff, and journalists.

Indiscriminate tightening of regulations around lobbyist access could inadvertently restrict the lobbying undertaken by charities, unions and community groups for the common good. Conversely, a carve-out for not-for-profits would end up excluding from oversight pressure groups and trade associations – who may represent powerful for-profit interests.

A good demonstration of the undemocratic consequences of the power to exclude from Parliament are the limitations Treasury under the former Morrison Government placed on which groups could attend the budget lockup. Women's groups who had attended the budget lockups for years were excluded in 2019, and environmental groups were excluded in 2020 and subsequent years.¹¹ The Australia Institute's Executive Director at the time, Ben Oquist, reflected on the Australia Institute being excluded:

The lock-up is part theatre, part political management. Journalists get to hear the government spin while locked up – but not the opposition's view. Journalists are separated from civil society, business and unions during the lock-up for much the same reason.

⁹ Sekules and Sullivan (1999) *Lobbying the Senate: two perspectives*

¹⁰ Sekules and Sullivan (1999) *Lobbying the Senate: two perspectives*

¹¹ Dent (2019) *Women's groups excluded from this year's Federal Budget Lockup*, <https://womensagenda.com.au/latest/womens-groups-excluded-from-this-years-federal-budget-lockup/>;
Karp (2020) *Environmental groups excluded from Australian budget lockup*, <https://www.theguardian.com/australia-news/2020/sep/26/environmental-groups-excluded-from-australian-budget-lockup>

Nonetheless, the arrangements are an important part of the country's policy process. The lock-up is designed to ensure all players are given equal access to information at the same time. No one should get the inside word on a new policy announcement that might give them a share or currency trading advantage.¹²

Indiscriminate barriers to entry are particularly serious because smaller organisations and those with fewer resources are more dependent on parliamentary access than large for-profit corporations. Wealthier entities are more likely to have the resources to meet with MPs outside of parliament, circumventing restrictions on access to Parliament House. The Australia Institute's 2023 report *Securing transparency and diversity in political finance* describes how major political parties make key decision-makers available for cash payments, which occur at informal dinners and luncheons, in boardrooms, and otherwise outside of Parliament House itself.¹³

Recommendations

- Formalise and democratise opportunities in Parliament House that are currently ad hoc and opaque. For example, consider an open application process for the budget lockup, including publishing whose applications were accepted and the reasons for accepting them.

¹² Oquist (2021) *Trampling budget democracy*, <https://www.canberratimes.com.au/story/7333807/trampling-budget-democracy/>

¹³ Browne and Walters (2023) *Securing transparency and diversity in political finance*, p 9
<https://australiainstitute.org.au/report/securing-transparency-and-diversity-in-political-finance/>

Sponsored passes

On the face of it, the sheer number of sponsored passes and the dramatic growth in the number of passes issued seems extraordinary. Between 2012 and 2017, the number of sponsored passes increased by about half: from 1,267 to 1,710.¹⁴ After a negligible increase in 2018 (to 1,755),¹⁵ it increased dramatically in 2019, to 2,380.¹⁶ By February 2023, it had fallen to 1,791.¹⁷

Most sponsored passes are given because the holder has a “significant and regular” requirement for unescorted access,¹⁸ and they are held by “lobbyists, representatives from non-Government and not-for-profit organisations, commercial companies, religious or specific interest groups, universities, cultural institutions, unions, representatives from diplomatic missions and media”.¹⁹

Sponsored passes allow those who hold them to move around Parliament House unescorted. Doing so makes meetings with MPs more convenient and allows for chance encounters with parliamentarians.

However, the increase in sponsored pass holders must be seen in the context of the abolition of unaccompanied day passes in 2014.²⁰ These passes allowed the holder to move around Parliament House unescorted, but only on a given day. Despite being unescorted, a visitor still had to be signed in by a political office and the office was responsible for the visitor and their behaviour while inside Parliament House. Now, someone who is signed in is only given an escorted pass: an authorised pass holder must escort them about Parliament

¹⁴ Senate Finance and Public Administration References Committee (2012) *The Operation of the Lobbying Code of Conduct and the Lobbyist Register (Report, 1 March 2012)*, p 10 s 2.21,

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/2010-13/lobbyingcode2011/index; Remeikis and Taylor (2019) ‘Win for lobbyists’: number of sponsored passes for parliament doubles in seven years, <https://www.theguardian.com/australia-news/2019/nov/12/win-for-lobbyists-number-of-sponsored-passes-for-parliament-doubles-in-seven-years>

¹⁵ Wood and Griffiths (2018) *Who’s in the room? Access and influence in Australian politics*, p 16

¹⁶ Remeikis and Taylor (2019) ‘Win for lobbyist’

¹⁷ Crowe (2023) *Orange is the new hack: 891 more lobbyists gain inside access to parliament house*, <https://www.smh.com.au/politics/federal/orange-is-the-new-hack-891-more-lobbyists-gain-inside-access-to-parliament-house-20230502-p5d4so.html>

¹⁸ Remeikis and Taylor (2019) ‘Win for lobbyists’

¹⁹ Madden (2021) *Who works in Parliament House?*

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2021/June/Who_works_in_Parliament_House

²⁰ SBS News (2014) *Security ramped up at parliament*, <https://www.sbs.com.au/news/article/security-ramped-up-at-parliament/rw3oe6869>

House.²¹ This makes it very difficult to meet with multiple journalists, parliamentarians, or ministers on the same day. Since a civil society representative who has made the effort to come to Canberra is likely to fill their day with several meetings, it is impractical to rely on the escorted pass – they are incentivised to get a sponsored pass instead.

Restoring the unaccompanied day pass would create a viable alternative for many who currently hold sponsored passes and allow sponsored passes to be reserved for those who genuinely routinely visit Parliament.

Access to federal press gallery

Some people who hold sponsored passes use them to access the Press Gallery and hold press conferences in media areas of Parliament House such as Mural Hall and the Senate Courtyard. With many members of the Press Gallery reluctant or unable to leave Parliament House during the work day, sponsored passes are needed to access journalists and attend and hold press conferences. They also make running events in Parliament House easier for civil society organisations.

A solution could be to make access to the Press Gallery, Mural Hall and other media areas of Parliament House more easily accessible without a sponsored pass, while restricting access to parliamentarians' offices to sponsored pass holders. This is analogous to the existing requirement that access to the ministerial wing requires an appointment.

Transparency around the process of acquiring a pass

One reason why sponsored passes are associated with lobbyists is because the process of getting a sponsored pass is obscure. A member of the public cannot go to the Parliament House website and find the instructions for applying for a sponsored pass. In fact, the only public information we could find on the Parliament House website on how to acquire a sponsored pass is a single sentence: "An existing passholder with policy rights to sponsor another individual is required for the issue of a sponsored pass."²²

In other words, while sponsored passes are not lobbyists' passes by design, they are in practice reserved for insiders because one needs inside knowledge to get one.

²¹ APH (n.d.) *Plan your visit*, https://www.aph.gov.au/visit_parliament/plan_your_visit

²² Madden (2021) *Who works in Parliament House?*; additional detail is in the formal policy, but not in a digestible form: Parliament of Australia (2023) *Parliament House private area access policy*, https://www.aph.gov.au/About_Parliament/Parliamentary_departments/departments_of_Parliamentary_Services/policies

More transparency about the different passes that exist and the criteria for acquiring them would demystify this aspect of Parliament House and level the playing field between insiders and others who have legitimate, recurring business in Parliament House.

Recommendations

- Restore unaccompanied day passes to make access to Parliament House without a sponsored pass feasible.
- Investigate the possibility of introducing a type of unescorted pass that provides access exclusively to the press gallery and press areas of parliament (not parliamentarians' offices).
- Publish a webpage or booklet that describes the different tiers of access to Parliament House, the requirements for each, and the number of people with each level of access.

Reforming the lobbyist register

EXPANDING THE REGISTER

The limitations of the existing lobbyist register are well-documented. The system lacks oversight, the only sanction for violating the code of conduct is deregistration, and no penalty applies for lobbying while unregistered.²³ There is no transparency regarding the frequency and timing of lobbyists' meetings with MPs or what issues they discuss. The cooling-off period for government representatives between leaving their government role and assuming a lobbying position is minimally enforced.²⁴

However, the false distinction between third-party and in-house lobbyists creates the largest loophole. The Australian Government Register of Lobbyists only records contracted, third-party lobbyists,²⁵ allowing in-house lobbyists to operate without oversight. Any increased restrictions or transparency measures applied to the current register, without efforts to capture in-house lobbyists, would have limited effectiveness.

The justification for not registering in-house lobbyists is that 'the interests that these lobbyists represent will be evident to Australian Government representatives.'²⁶ However, being aware of a lobbyist's intention to influence does not render a government representative immune to that influence. Lobbying is fundamentally a practice of representation, not deception.

As of January this year, the Federal Register of Lobbyists listed 700 lobbyists, operating on behalf of 2,382 clients, in Parliament House, while estimates from 2012 place the number of lobbyists, in-house and third-party, in the system at 5,000.²⁷

Recommendation

- Extend the lobbyist register to include in-house corporate lobbyists.

²³ Inferred from the sanctions for breaches of the code described in: Attorney-General's Department (n.d.) *Information for lobbyists*, <https://www.ag.gov.au/integrity/australian-government-register-lobbyists/information-lobbyists#breaches-of-the-code>

²⁴ The Centre for Public Integrity (2023) *Closing the revolving door*, p 2, https://publicintegrity.org.au/research_papers/closing-the-revolving-door/

²⁵ Attorney General's Department (n.d.) *Lobbying Code of Conduct*, <https://www.ag.gov.au/integrity/publications/lobbying-code-conduct>

²⁶ Attorney General's Department (n.d.) *Information for lobbyists*, <https://www.ag.gov.au/integrity/australian-government-register-lobbyists/information-lobbyists>

²⁷ Senate Finance and Public Administration References Committee (2012) *The Operation of the Lobbying Code of Conduct and the Lobbyist Register (Report, 1 March 2012)*. p 10 s 2.21

OVERSIGHT

At present, if an MP, political staffer, parliamentarian, other government representative, or even another lobbyist notices a violation of the lobbyist code of conduct, the onus is on them to recognise and report the matter to the Attorney General's Department. Such violations could include lobbying without registration or former government representatives not adhering to the 18-month 'cooling off periods.' It is also a government representative's responsibility to check that the details of any lobbyist they meet are correct and up to date on the register.²⁸

There is nowhere for government representatives, including staffers and MPs, to seek independent advice regarding interactions with lobbyists. It is difficult to imagine that under this system all relevant incidents are being reported, investigated, and offenders appropriately penalised.

The only punishment for a lobbyist violating the code of conduct is deregistration from the lobbyist register. The Attorney-General's Department does not list a penalty for lobbying while unregistered.²⁹ While deregistered lobbyists are listed, the reason for their deregistration is not – nor are those who were deregistered as a sanction but have since re-registered identified anywhere.

Violations of the lobbyist code can constitute corrupt conduct, meaning the National Anti-Corruption Commission can decide to investigate them.³⁰ However, the NACC does not generally oversee lobbying.

Recommendation

- Parliament or an appropriate independent authority should conduct a review into how violations of the lobbyist code of conduct are enforced and possible stronger sanctions for non-compliance.

²⁸ Attorney General's Department (n.d.) *Information for Australian Government representatives*, <https://www.ag.gov.au/integrity/australian-government-register-lobbyists/information-australian-government-representatives>

²⁹ Attorney-General's Department (n.d.) *Information for lobbyists*

³⁰ Attorney-General's Department (n.d.) *What is corrupt conduct?* <https://www.ag.gov.au/integrity/national-anti-corruption-commission/what-corrupt-conduct>

Disclosing ministerial meetings

Ministerial diaries

The public have a right to know when lobbyists are meeting with ministers. NSW and Queensland have required ministers to publish their diaries since 2014 and 2013, respectively, and late last year Victoria introduced the same requirement. Victorian ministers will disclose quarterly, as do NSW ministers, while Queensland ministers disclose monthly.³¹ If the federal government adopted the same rule, it would provide critical insight into the scale, access, and influence of lobbying in federal parliament.

Disclosures on a monthly basis, or more frequently, would allow ministers to be held account for their meetings with lobbyists at the time they are making the decisions that the lobbying may influence.

Representations to government

Documents made as part of representations to government should be disclosed automatically. This would help ensure that what interest groups say to governments is consistent with what they say publicly, and would also strengthen the ability of government to act on behalf of the public rather than at the behest of the powerful.

For example, a recent report by climate and sustainability think tank InfluenceMap depended on multiple FOI requests to reveal that the Federal Chamber of Automotive Industries has been lobbying for weaker pollution rules for Australian cars while publicly advocating for an orderly transition from petrol to electric vehicles.³² Information like this should be available in a timely manner as a matter of course.

³¹ Queensland Government (n.d.) *Ministers, assistant ministers and chiefs of staff diaries*, <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/ministerial-handbook/ethics/ministerialdiaries.aspx>; NSW Government (n.d.) *Ministers' diary disclosures*, <https://www.nsw.gov.au/departments-and-agencies/the-cabinet-office/access-to-information/ministers-diary-disclosures>; Victorian Government (2023) *2023 ministerial diary disclosures: Ministers are required to publish summaries from their diaries on a quarterly basis*, <https://www.vic.gov.au/2023-ministerial-diary-disclosures>

³² InfluenceMap (2023) *The FCAI and Australian Climate Policy*, <https://influencemap.org/briefing/The-FCAI-and-Australian-Climate-Policy-22253>; Cubby (2023) *Inside the car industry's climate lobbying push*, <https://www.smh.com.au/national/inside-the-car-industry-s-climate-lobbying-push-20230522-p5da61.html>

Recommendations

- Disclose ministerial diaries monthly, including the purpose of the meeting.
- Link the lobbyist register to ministerial diary entries, so the lobbyist's recent and upcoming meetings appear alongside their other information on the register.
- Proactive disclosure of documents made as part of representations to government.

Conclusion

Lobbying is a democratic right, and lobbyists – at their best – can help civil society groups and community organisations to put their case to government. However, when lobbying is secretive, gives vested interests an unfair advantage or excludes the public from negotiations, it can be damaging to public trust.

Understanding the reasons why lobbyists are used helps explain their prevalence, and points to key changes to make lobbying more transparent: expanding the lobbyist register and publishing ministerial diaries.

Similarly, the large number of sponsored passes that have been issued is in part explained by the lack of other access options for Parliament House. Introducing other access options should reduce dependence on sponsored passes.

All reforms should keep one eye on potential unintended consequences. The rich and powerful have many shortcuts to access decision-makers, so restrictions on how civil society and the community access decision-makers should be imposed only with careful consideration.