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Submission to the inquiry into lobbying access and oversight

Kate Griffiths

Summary

I welcome the opportunity to provide input to the Senate Finance and Public Administration References Committee's inquiry into access to Australian Parliament House by lobbyists.

Lobbying is an important part of the democratic 'contest of ideas'. But some groups have a lot more access to decision makers, and therefore more opportunity to influence public decisions in their favour.

Transparency around lobbying activity can help level the playing field and protect the public interest. The goal is not to deter advocacy but to underscore the responsibilities of public officials.

Greater public scrutiny might encourage policymakers to seek out a wider range of views. And it can alert under-represented groups to speak up when a particular policy issue is 'live'.

Sponsored passes to Parliament House provide privileged opportunities to influence decision makers, whether through formal meetings or more casual corridor catch-ups. Lobbyists who hold these passes should be publicly registered and should be required to abide by the lobbying code of conduct.

Former politicians, ministerial advisers, and senior government officials who engage in lobbying should also be required to register themselves and abide by the lobbying code of conduct.

Passholders who breach the lobbying code of conduct should have their pass to Parliament House suspended or withdrawn.

An expanded lobbyist register that includes sponsored passholders should also include more public information on lobbying activity – including who was lobbied, when, and on what topic.

These measures would improve public visibility of lobbying in Parliament House. But of course lobbying can take place anywhere.

Publishing ministerial diaries is a critical complementary measure to provide visibility on who is getting access to Australia's most senior public policy decision makers. Publishing ministerial diaries would enable journalists and others to know who ministers are meeting – and, perhaps even more importantly, who they're not meeting – which could encourage politicians to seek more diverse input.

Policymakers should actively seek out a range of voices – including those of disadvantaged groups and more diffuse interests. Boosting countervailing voices in policy debates would give politicians and public officials better information with which to adjudicate the public interest.

Further detail about the need for and nature of these reforms is provided in the **attached** Grattan Institute report, *Who's in the room? Access and influence in Australian politics*.

1 Access to Parliament House matters

Lobbying is an important part of the democratic ‘contest of ideas’. But some groups have a lot more access to decision makers, and therefore more opportunity to influence public decisions in their favour. Transparency around lobbying activity can help level the playing field and protect the public interest.

1.1 Advocacy is an essential part of democracy

Democracy works best when groups can make representations to government and advocate for themselves. This is critical to keeping government in check and to the development of good policy.

Lobbying can introduce new ideas into the pool of potential policies, as well as reduce the likelihood of those in office making uninformed or damaging decisions.

Lobbying itself is not the problem. The problem is that some interests have a lot more opportunity to influence than others.

It shouldn’t be about how much money you have or whether you know the right people – but too often it is.

1.2 Some groups get a lot more access than others

The playing field for access and influence isn’t fair.

In 2018 Grattan Institute published a report called *Who’s in the room?* that crunched the numbers on political donations and lobbying activity to understand the links between money, access,

and influence in Australian politics.¹ We found that the well-resourced and highly motivated achieve much greater access and influence than most Australians could ever expect.

Our research showed that well-resourced groups, particularly big businesses and unions, use money, resources, and relationships to influence policy to serve their interests.

In particular, highly regulated businesses – those that have the most to gain, or lose, from government decisions – have the most meetings with senior politicians, make the most use of commercial lobbyists, and are also disproportionately large donors to political parties (Figure 1.1). Many of these businesses have the resources to hire former politicians and advisers, and to woo politicians through hospitality.²

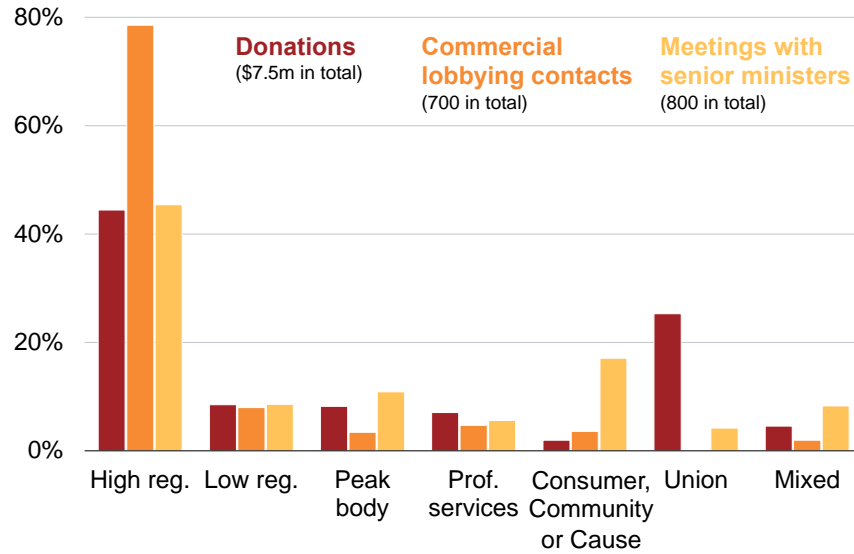
Some industries, such as gambling and property development, are hugely over-represented compared to their contribution to the economy (Figure 1.2).

No one should be surprised that these groups are knocking on politicians’ doors. But politicians should seek out a wide range of views and, with those views in mind, adjudicate the public interest. Those who come knocking are not representative.

¹ Wood, Griffiths, and Chivers (2018).

² Wood, Griffiths, and Chivers (2018, Chapter 2).

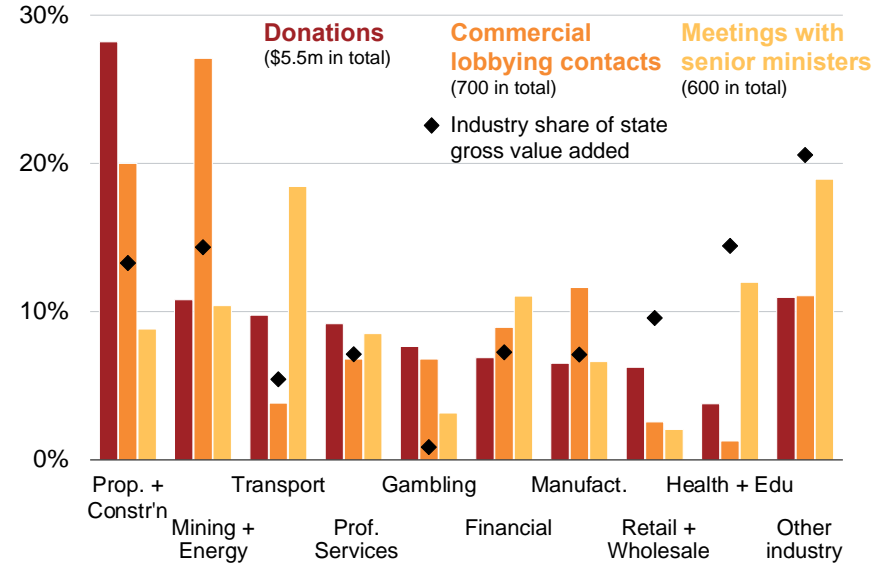
Figure 1.1: Highly regulated industries lobby most
Share of external donations, contacts, and meetings in Queensland



Notes: We analysed Queensland because data on commercial lobbying contacts are available there. Individuals and unknown entities are excluded (individuals represented 13% of major donations; unknown entities represented less than 1%). All donations declared to April 2018 are included. Lobbying contacts includes only clients that made at least five contacts.

Sources: Electoral Commission of Queensland disclosure returns; Queensland Government lobby contacts register; Queensland ministerial diaries.

Figure 1.2: Gambling and property development are over-represented compared to their economic contribution
Share of external donations, contacts, and meetings in Queensland



Notes: We analysed Queensland because data on commercial lobbying contacts are available there. 'NA' and 'Multiple Categories' are excluded (41% of major donors, mostly individuals). All donations declared to April 2018 are included. Lobbying contacts includes only clients that made at least five contacts. The gambling industry's share of gross value added is shown as all of 'Arts and Recreation', although gambling represents only a subset.

Sources: Electoral Commission of Queensland disclosure returns; Queensland Government lobby contacts register; Queensland ministerial diaries; ABS 5220.0 (2016-17).

1.3 Greater access can lead to undue influence

When certain interests get a lot more access to decision makers, there is a risk that policy gets skewed in their favour at the expense of the public interest.

Good policy depends on the best ideas prevailing, not simply the loudest voices.

Our research shows that consumer and community voices are often not in the room at all. It can be difficult for broad constituencies such as ‘taxpayers’ or ‘young people’ to collectively organise and advocate for themselves.³ Many disadvantaged groups also lack the capacity to engage with policy processes.

This impoverishes debate, undermines the contest of ideas, and can lead to policy that serves the few rather than the many.

1.4 Oversight of lobbying should focus on transparency

Transparency around lobbying activity can help level the playing field and protect the public interest.⁴ Greater public scrutiny might encourage policymakers to seek out a wider range of views. And it can alert under-represented groups to speak up when a particular policy issue is ‘live’.

Oversight efforts should be focused on providing the public, media, and parliament with better information on who gets regular access to policymakers, and what the policy issues involved are.

³ The few that stand to gain a lot tend to be more motivated to persuade decision makers than the many that each stand to lose a little, even if the collective losses are substantial: Olson (1965).

⁴ The OECD (2013) argues that ‘a sound framework for transparency in lobbying is crucial to safeguard the integrity of the public decision-making process’.

2 Publish the names of lobbying passholders and hold them to the code of conduct

Sponsored passes to Parliament House provide privileged opportunities to influence decision makers, whether through formal meetings or more casual corridor catch-ups. Lobbyists who hold these passes should be publicly registered and should be required to abide by the lobbying code of conduct.

2.1 Publish the names of lobbying passholders on the lobbyists register

Sponsored passes to Parliament House are granted to people who require 'significant and regular business access' to politicians. This includes the most active commercial and in-house lobbyists.

Currently, the Australian Government register of lobbyists only captures third-party lobbyists – those who are paid to lobby politicians on behalf of a client. Ideally the register would include all those paid to lobby regularly ('repeat players'),⁵ whether they are lobbying for a client, peak body, union, or other employer.

The challenges have always been in defining 'repeat players' and enforcing their registration.

Linking sponsored passes to the lobbyists register provides a simple solution. Lobbying passholders are clearly 'repeat players' and the pass is a privilege that can be withdrawn if a lobbyist chooses not to register themselves.

The Department of Parliamentary Services, which manages access to Parliament House, has previously refused to publish a list of names or organisations that hold sponsored passes on security grounds. But these security risks are manageable: the UK, US, and New Zealand, for instance, already publish lists of passholders.⁶

The burden to register as a lobbyist should be negligible. Passholders would simply need to declare who they are lobbying for and the portfolio areas they are lobbying in, as part of the existing application process.

Some people who hold sponsored passes may not consider themselves lobbyists – for example, academics or other experts that politicians might regularly consult. But these people are key influencers nonetheless. There should be no opprobrium for being listed as a passholder, and the restrictions that would be extended to apply to them under the code of conduct – such as not engaging in corrupt or misleading behaviour – would not unduly constrain their activities.

This approach would not capture lobbying outside of Parliament House. Nor would it capture those groups or individuals that lobby only occasionally. That's why there should be additional transparency measures, particularly around access to ministers (Section 3.1).

⁵ Distinguishing 'repeat players' helps to reduce the administrative burden on 'ad hoc' and 'one-off' lobbying activity: see Wood and Griffiths (2019a).

⁶ Wood, Griffiths, and Chivers (2018, p. 59).

Former politicians, advisers, and officials should also be registered

Any former politician, ministerial adviser, or senior government official who engages in lobbying (whether for a client or an employer) should also be required to register themselves on the lobbyists register.

These people have greater potential to influence than most lobbyists, so it is particularly important that they are registered and abide by the lobbying code of conduct. Their former roles give them connections, information, and potentially 'favours owed' that heighten the risks of undue influence over public decisions.⁷

2.2 Publish lobbying contacts

An expanded lobbyist register that includes sponsored passholders should also include more information on lobbying activity.

All registered lobbyists should be required to record their lobbying contacts – who was lobbied, the date, the party represented (for third-party lobbyists), and the subject matter – to be made publicly available. The Queensland Integrity Commissioner administers a register of lobbying contacts that could provide a guide.

⁷ See Wood and Griffiths (2019b).

⁸ When someone becomes a federal minister in Australia, they must commit to waiting at least 18 months after their ministerial duties cease before lobbying on any issue they were officially involved with in their

2.3 Lobbyists should lose their pass if they breach the lobbying code of conduct

Registered lobbyists are required to abide by the lobbying code of conduct. The code is not onerous – it specifies minimum ethical standards of conduct that should apply to anyone lobbying, including not engaging in misleading or corrupt conduct.

Linking lobbying passholders to the lobbyists register would provide a stronger mechanism for enforcing the lobbying code of conduct. Passes should be suspended or withdrawn for breaches of the code.

Any former minister, adviser, or official lobbying within their 'cooling-off period'⁸ should also lose their privileged access – although larger penalties should also apply, given the greater risks in these circumstances.⁹

final 18 months in office. Ministerial advisers and senior public servants are subject to a 'cooling off period' of 12 months.

⁹ See Wood and Griffiths (2019b).

3 Broader transparency measures would help level the playing field

Access and influence are inextricably linked, so it's important that the Australian public can see who meets with senior policymakers. Broader transparency measures would give countervailing voices an opportunity to speak up, and encourage policymakers to seek out a wider range of views.

3.1 Publish ministerial diaries

Ministers are Australia's most senior public policy decision makers, so meeting with a minister is a particularly privileged opportunity to influence. Publishing ministerial diaries would enable journalists and others to know who ministers are meeting – and, perhaps even more importantly, who they're not meeting – which could encourage politicians to seek more diverse input.

Ministerial offices should publish details of all official meetings, both in the office and offsite, all scheduled phone calls, and all events attended by a minister in an official capacity. 'Official meetings' should include not only those at which a minister was present, but also those held with ministerial advisers only. Records of meetings should identify those present and key issues discussed.

To be useful, ministerial diaries must be published in a timely manner and an accessible form. For example, all meetings for one month could be published by the end of the following month, as already happens in Queensland. The publication should be searchable and exportable, to facilitate scrutiny.

3.2 Boost countervailing voices in policy review processes

Citizen engagement is a core responsibility of politicians and public servants. But it's not easy. One way to get better, more inclusive policy debates is to embrace policy review processes that actively seek out a range of voices.

Various institutions and processes already facilitate this and could provide a guide.¹⁰ For example:

- The Productivity Commission inquiry process is a best-practice example of broad consultation. It requests input from groups on all sides of a debate, publishes their submissions, holds public hearings to test the views of interested parties, publishes a draft that includes recommendations, and then holds another round of consultation on the draft. The government is required to table the commission's findings and respond to recommendations within 25 sitting days.
- The Senate and House of Representatives committee hearing processes, while not exhaustive, also draw out views from a range of parties and put them on the public record. The 2018-19 House inquiry on the implications of removing refundable franking credits, while highly politicised, adopted an innovative approach to consultation. Time was allocated at every public hearing for interested members of the public to make three-minute representations to the committee.

¹⁰ Wood et al (2018, pp. 67-68).

References

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