ACT INTEGRITY COMMISSION

Inquiry into arrangements for lobbying and influence in government in the ACT

Discussion Paper 2

October 2026

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Acknowledgement of Country

The ACT Integrity Commission acknowledges the Ngunnawal people as the traditional owners and custodians of the Canberra region. We pay our respects to Elders past, present, and emerging and extend our respects to all Aboriginal and Torres Strait Islander people.

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Issues arising from responses to the Commission's discussion paper on lobbying

1. In 2026, the ACT Integrity Commission commenced an own motion inquiry into existing arrangements for lobbying government in the ACT. The inquiry's overarching objective is to examine whether the present framework is adequate, focusing on the need for a scheme that gives practical guidance on managing communications between government and the community in ways that increase public confidence in the integrity of government decision-making. The purpose of the present discussion is to clarify the foundational issues in a preliminary way and raise for consideration the extent to which the problems they pose can usefully be addressed by a regulatory scheme, hopefully to provide a basis for further discussion with stakeholders over the next few months. No final view about any of the issues has been reached.

2. At present, the ACT lobbying scheme is essentially limited to regulating the activities of third-party lobbyists, rather than lobbying activity more generally. Although civic groups, unions, commercial and industry peak bodies, representative community groups and charities ("representative entities") may lobby in the sense of making representations on behalf of their members or the wider community, they are excluded from the scheme. Entities that make representations on their own behalf are also not covered. Whether wider regulation is needed and, if so, what form it should take is the major focus of the Commission's inquiry.

3. It should be borne in mind that government routinely reaches out to various parts of the community to seek information and views about proposed changes in policy and issues that may require action. Responses to this process are generally not regarded as lobbying. Written submissions to government are also usually not regarded as calling for lobbying regulation, except so far as lobbyists are concerned, perhaps because those communications are already subject to elaborate bureaucratic practices, including arrangements that enable access and scrutiny by appropriate auditors.

4. The Commission's discussion paper, released in March 2026, sought responses dealing with –

    - the scope of regulation (who should be covered);
    - activities that should be covered by lobbying regulation (what should be covered);
    - "influencing" activities that should remain outside the scope of regulation;
    - standards of conduct that should apply to lobbyists;
    - disclosure obligations on lobbyists and those being lobbied;
    - arrangements to monitor compliance and address regulatory non-compliance; and
    - the effectiveness of the current administration of the register.

5. Submissions were made on behalf of government, industry, advocacy organisations and academia. All assumed, as a starting principle, that lobbying government by elements of civil society is an essential feature of democratic governance and should not be restricted more than is necessary to maintain its integrity. They also accepted, to varying degrees, the need for regulation of how that activity should be managed. There was, however, marked division about the desirability of stronger regulation and enhanced transparency measures, particularly when balanced against the risk of burdening legitimate and desirable engagement with government decision-makers through restrictions and costly administrative requirements. It should be noted, however, that representative entities would invariably have their own rules about institutional integrity and record-keeping in respect of the exercise of their functions, so that widening the regime governing lobbyists as presently defined to those organisations would not appear to impose significant additional burdens on them.

6. Consideration of the responses made it clear that greater attention needs to be given to the assumptions underlying the accepted need to regulate lobbying activity. Although those assumptions necessarily govern the character of any scheme, their nature and implications were not addressed in the submissions received by the Commission.

7. At the outset, however, it is important to note that lobbying does not call for an approach to government decision-making that differs significantly from the ordinary case. The focus should therefore be on how government receives, records and responds to communications, whether labelled lobbying or not. This focus is usefully described as transparency. Transparency concerns the identities of the communicator and recipient, as well as the content of and context for the communication. But what should transparency entail? How much should be recorded, how much should be disclosed or disclosable, and by what means? There does not seem to be a real need to regulate who may communicate with government; indeed, doing so seems inconsistent with democratic principle. The real issue appears to be how communications should be recorded, by whom, and how and to whom they should be disclosed. The practical point of transparency is to capture information that will enable government decision-making to be scrutinised.

8. Underlying this analysis is the assumption that some interest groups, for whatever reason, will inevitably have greater access to government than others. This inequality of access is said to be unfair, or even undemocratic, a claim closely linked to another assumption, namely, that some government decisions result from, or are inappropriately affected by, undue influence. The metaphors often used are, in the first case, the limited interests present at the table and, in the second, someone placing a thumb on the scale. The notions of unequal access and undue influence must be considered, as has already been implied, in light of the fundamental principle that all constituents of the body politic have a right to access government and to have their interests fairly weighed. The extent of access that can actually be provided is, however, a difficult practical problem because of the volume of communications and information addressing any significant issue of public interest. This has sometimes been called the “firehose” problem. Managing the firehose necessarily entails substantial, and sometimes brutal, filtering and prioritisation. Government does not have unlimited resources. Access to parties seeking access must necessarily be rationed. It is destructive of effective government to attempt to give equal consideration to all incoming interlocutions. The difficulty of designing a selection process that will satisfy all even reasonable demands for attention is obvious. One way or another, accidentally or intentionally, inequality of access – sometimes justified and sometimes unfortunate – is unavoidable. Nevertheless, it should be reasonably possible to identify interests likely to make the most useful contributions to the questions under consideration and endeavour to ensure they are seated at the table. In large part, it seems likely that this is the approach taken by government, for all that some parties might be thought to have been inappropriately uninvited. An additional element that will inevitably (and not unreasonably) have a role will, of course, be the political interests of the government in the question.

9. From the outside, looking in as it were, well-resourced entities — such as peak bodies representing gambling, primary industry or mining interests (as notorious examples) — are likely to be able to approach the various levers of government more effectively than community organisations with competing interests but far more limited resources. Even if perceptions that this is unfair are accepted as reasonable, little in the public debate identifies any sensible way of correcting it, perhaps because there does not appear to be any reasonable way by regulation to increase or decrease — that is, ration — access to decision-makers by competing interests; there can only be so many seats at the table. In this area, the practice of governments organising invite-only conferences or meet-the-Minister functions has been regarded by some as problematic. However, limitations of this kind do not appear to be different in principle from government reaching out to persons or groups with whom communication is thought useful, even if only to seek political support. A recent example of what is suggested to provide unfair opportunities for lobbying is the extent of access provided to lobbyists in Parliament House, criticised because such access is not available to ordinary members of the public. Again, a reasonable solution to

this perceived problem is far from obvious. The apparent implication of the criticism that such access should be all or nothing is at least reasonably contestable.

10. The realities of political activity and government administration inevitably mean that personal access to Ministers, and indirectly to the bureaucracy, by members of the government's party or affiliated organisations is to be expected, and is likely to be prioritised, for obvious and defensible reasons. Economic or social weight will also have its place. Other, even appropriate, participants will thus be moved away from the front row, if not out of the room. The managing director of BHP or the General Secretary of the ACTU will always get an appointment. Mr Smith from 51 Main Street, Broken Hill, almost certainly will not, although he will probably be asked to put his submission in writing. In short, individual access to government is a zero-sum game. Furthermore, it may be — though the inquiry may produce useful suggestions — that lobbying regulation cannot usefully affect this reality.

11. This discussion assumes that it is reasonable for Ministers, for example, to decide whether to have formal or informal meetings with particular individuals. Such meetings should not be prohibited merely because meetings with others are not entertained, although disclosure does call for consideration. The inability to communicate in person does not exclude other forms of communication, whether indirect (say, through the local member or a community group) or written. Applying the table metaphor, information may be placed on the table even if its advocate is not seated there. Government must, of course, consider all relevant points of view in coming to its decisions. The bureaucracy, whose function is to inform government, is always seated at the table and is responsible for bringing relevant information from outside sources into account, in that sense representing the public interest. Its influence is of critical importance as a potential corrective of perceptions of inequality of access or suspicions of undue influence.

12. Equality of access, if understood as direct or personal access, is therefore incapable of practical application, whatever penumbra of possible meaning is given to "equality". As an aspiration, let alone as a principle, it is not only practically useless but would be destructive of effective government. Consideration of diverse positions relevant to a decision is undertaken and documented through a conventionally elaborate decision-making process, and the utility of regulating that process further or differently merely because lobbying has occurred seems doubtful. Personal access is far from the only practical mode of accessing and influencing government decision-making. It may well not be the most effective way of doing so: there is always a gap — almost always impossible to measure — between access and actual influence.

13. The second concern is undue influence – the "thumb on the scale". The starting point is that every interested party should have its voice, or point of view, considered in government decision-making and, in that sense, should have access. Everyone should be able to put a thumb on one scale or another, leaving aside the complication that almost every major decision will have more than one pan into which relevant weights need to be placed. At the same time, some thumbs are bigger than others and therefore more influential. This can be reasonable where the interest is more significant for the community. What, then, makes the weight improperly heavy or the influence undue? One accepted circumstance is where personal loyalties, essentially conflicts of interest, play a role when they should be entirely left out of account. Conflicts of interest arise in many circumstances, including pork-barrelling, where the decision-maker is often the party in government hoping to win an election. A complicating difficulty is that pork-barrelling may, in an important sense, respond to a democratic demand from a constituency and is therefore influential for reasons that are not necessarily inherently improper. A recent IBAC Operation Richmond report provides a stark example. In the course of negotiating an enterprise agreement between government and the UFU, its Secretary, Peter Marshall, amongst other things, threatened to withdraw union support for the ALP in an impending election, including by members not staffing polling booths as usual and by undertaking industrial action. The union was a constituent with an interest, which it had publicly advocated; it was directly interested in the matter being negotiated; and it was entitled to state, even stridently and at inconvenient times, both its interests and whether it would support the government

at election time. The real integrity problem lay not in the lobbying itself but in the government's response to Mr Marshall's approaches. As it happened, that response involved relevant officials, including the Premier, breaching government processes which, had they been followed, would have avoided at least the central elements of the reported wrongdoing. No further processes were needed; those in place had to be obeyed. This appeared to be the essential issue, rather than the limits of lobbying regulation. Whether, in the result, the UFU had been unduly influential depended on the character of the government's response. In short, telephone messages to Ministers at 2 am cannot, and possibly should not, be stopped. There is no need to regulate the timing of phone calls or the locking of doors.
The character of Mr Marshall's lobbying was not the corruption risk, which was the disregarding by officials to comply with the rules already in place. Thus, the answer to suspicions of undue influence may be rather more usefully to be found in controlling the response (including transparency) to lobbying rather than in the attempt to regulate the lobbying itself.

14. Resolving competition for government resources between constituencies, such as a sports arena in one electorate or a hospital in another, or between groups of constituents, such as education for young people competing with funding for old-age pensions, is the very stuff of democracy. The same is true of policy contests, such as those presented by current energy needs and climate change, the need for timber and the preservation of forests, or upstream and downstream river use, etc, etc. In such cases, the competing interests will invariably debate in the public arena while also undertaking whatever private lobbying they can. In this situation, it is difficult to justify a case for additional transparency, conflicts of interest aside, given the publicity of the competing views and interests. Comprehensive and elaborate conflict of interest rules already apply to government; it seems doubtfully useful to add another layer as an element of lobbying regulation.

15. It may be worth mentioning here a recent example of pork-barrelling interacting with the notion of equal access, headlined as follows –

> An "invite-only" grants program was overwhelmingly directed into safe Labor seats and marginal seats the party wanted to win at the 2025 federal election, a Centre for Public Integrity investigation of the $560 million program has concluded. While projects in safe and marginal Labor seats sometimes received grants worth tens of millions of dollars, 45 electorates were not invited to the Major and Local Community Infrastructure (MLCI) Program and received no funding.

It was said that the invite-only program had been used to pork-barrel seats Labor wanted to win and was therefore, prima facie, "the misuse of public money". Of course, it is reasonable to call on the Government to justify these outcomes. That is the political process triggered by public disclosure, and it demonstrates the fundamental importance of transparency in this space. Without going into the merits, it should in fairness be observed that the MLCI Program was available only to invited parties (all government or municipal agencies) because its role was to evaluate applications responding to election commitments already made. It was not an across-government scheme for all grants, let alone a scheme that excluded other applications for grants, which are subject to other evaluative processes. It is therefore unsurprising that the outcome reflected the imbalance to which the headline drew attention. Whether the commitments should have been made is another question, but making such commitments appears to have been a vital part of politics since the days of the ancient Greeks. No inquiry into, or regulation of, lobbying will change this reality; nor is it clear that it should.

16. It is also worth noting that there is a widespread habit of illogically inferring from the fact that a government decision has favoured one side of a debatable issue that it resulted, in whole or in part, from the winning side having had higher-ranking contacts or shouted louder than the losing side.
The speculative character of this reasoning is obvious but, of course, it cannot be irrelevant to consider whether the successful side may in fact have had the better case.

17. Decisions are often attributed to the direct or indirect influence of insiders who have moved from government to employment by a lobbyist or by the interested entity itself. Not surprisingly, there appears to be no research demonstrating that this is a significant factor, although there are anecdotal claims that it is widespread and problematic. The rational basis for implying that communications between government and former officials are necessarily improper when they concern policy development or decision-making is unclear. There is an available argument that lobbying, as a professional activity based on expertise and personal experience of government, benefits public business as well as private enterprise and thus the wider interests of the community. Several prominent lobbyists have defended their work as a legitimate service that helps clients navigate complex government systems. Where the lobbyist uses personal contacts, conflicts of interest need to be declared by the official, but prohibition of such communications is difficult to justify. The revolving-door problem has been approached, and this may be the only realistic way of doing so, through cooling-off periods. One problem is that such periods are not only arbitrary but almost impossible to enforce and do not address the possible misuse, within an employing organisation, of confidential information held by the former official. Regulation differs across jurisdictions and the Commission's inquiry proposes to examine the ACT's position because, although difficult, the issue is important and may be exacerbated by the smallness of the jurisdiction. There does not, however, seem to be an effective way to police the use of insider information or assistance obtained from a former official within a business. Barring employment because of merely potential misuse of confidential information appears to be an extreme solution, and whether it is necessary, or even desirable, needs further examination.

18. The adversarial approach to resolving conflicting interests reflects the widespread lack of trust in politics that underlies public debate about lobbying. It is doubtful that any regulatory scheme can significantly allay that concern, because it rests on the almost instinctive and widespread suspicion, itself forming a substantial part of public debate by politicians themselves, that government does not make decisions from a genuine desire to serve the public interest, but according to what serves its electoral interest or, in some cases, the personal political interest of a decision maker.

19. It seems highly unlikely that lobbying regulation, however stringent, is capable of changing public perceptions about the extent to which governments can be trusted. Prioritising that goal (i.e. focusing on appearances) may tend to produce an impractical and expensive scheme that obstructs efficient government. General nostrums, such as equality of access and avoidance of undue influence, do not help. That is not to say that public concerns about lobbying should be disregarded or that regulation is inappropriate. Rather than focusing on lobbying itself, however, a more useful approach may be to develop effective and efficient ways of ensuring transparency in the government response to lobbying. The aim would be to strengthen accountability by enhancing the ability of political interlocutors such as Members of the Assembly, integrity agencies such as the Integrity Commission, the Auditor-General and the Ombudsman, and members of the public and media, including through freedom of information, to interrogate the propriety of decisions and decision-making processes.

20. The governance issues presented by lobbying therefore appear to be most realistically approached by focusing on integrity in government for its own sake, rather than by applying general nostrums such as equality of access or avoidance of undue influence. This would concentrate on the extent to which lobbying communications should be recorded and disclosed in order to enable government decisions to be interrogated, leaving it to the elaborate rules already in existence to govern the process of decision-making itself. This will encompass the scope of the present scheme in the Territory concerning the identification and conduct of third-party lobbyists, including representative community, industry and commercial groups, and how their interactions should be managed, and also the particular actions of government necessary to ensure adequacy of information available in the public sphere or by the various modes of institutional interrogation.

21. (This discussion has not dealt with donation caps, as that subject is covered in the ACT by the Electoral Act 1992. For related reasons, prohibition of donations from particular sources has not been covered.)