Railroading democracy

Dr Carmen Lawrence MP

Federal Member for Fremantle,
Former Premier of West Australia

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Democratic Audit of Australia
Australian National University
Canberra, ACT 0200
Australia
http://democratic.audit.anu.edu.au

We have been forcefully reminded by recent revelations before the West Australian Corruption and Crime Commission (CCC) that lobbying is a ubiquitous—and occasionally pernicious—feature of our political system. And not just in Western Australia. One of the most obvious features of national political life is the steady stream of lobbyists—individuals and organisations—who turn up in the corridors of parliaments around the country seeking to influence the policies and decisions of their representatives. Lobbyists are so named because of the historical practice of petitioners waiting in the lobbies and corridors of Westminster so as to accost MPs and try to persuade them to take up petitioners' causes. Today, the process has become much more formal and well-funded—and much less visible.

Some lobbyists are clearly motivated by their own or their shareholders' interests; others by a desire to achieve particular outcomes which they believe will be of benefit to the society or some more narrowly defined sectional interest. Most people would regard such contact as a legitimate and basic right in any democracy, since politicians need to be aware of the needs and wants of various sectors of the community and to be exposed to a range of policy ideas. But it is disturbing that some are more equal than others in this process of persuasion and, worse, that a system of private lobbying, especially when it is linked to substantial campaign donations, may increase the likelihood of frank corruption.

Some—mainly business—groups are able to devote substantial resources to the task of lobbying and to purchase access to ministers and senior public servants. They wine and dine MPs and provide them with 'corporate hospitality' as part of carefully crafted lobbying built on personal contact and expensive 'information' campaigns. And no proper public record is kept of these proceedings.

This may give rise to the not unreasonable suspicion that this hospitality and the large campaign donations made by the same players may help to open doors. It's almost certain that they do. Corporations do not make large donations out of a charitable impulse or a commitment to civic duty. They do it because they believe it will purchase influence. However, the promotion of these special interests may be inimical to the public good,

especially if other, contrary, views are not given the same access or weight. When access to Ministers and MPs is sold, as it now so often is, there is a very real possibility of corruption.

The fact that, generally speaking, all votes have equal value does not mean that the electoral system gives everyone equal influence. Well-funded lobbying and campaign donations strip average voters of equality at the ballot box. Those who can afford the flights to Canberra, the permanent lobbyists and the hospitality may well drown out other less well-funded voices. There is every likelihood that, without constant public scrutiny, political decisions will be distorted to favour party financiers, especially those who follow up with targeted lobbying to further their own objectives; so-called 'corruption as undue influence'. Australian Election Studies data show that almost half voters already believe that it is the preferences of big interests that determine policy, not the preferences of voters.

It is clear that candidates and sitting politicians do respond to these campaigns and they do help shape the policy discussions and decisions. Such lobbying may go well beyond 'influence peddling'. As has been revealed in Western Australia, corporate funds and expertise were funnelled (without full disclosure) into the campaigns of those local councillors and residents who supported the developers behind controversial coastal housing and tourism projects. Local activists opposed to the developments also found themselves confronting well-funded, organised supportive 'community groups' funded by the developers. When they objected that these practices were illegitimate, they were threatened with legal action.

Even when the actions of lobbyists fall short of corruption, the public should be concerned that some people are in a very privileged position to change legislation or administration through such lobbying. Since we are aware of only a small proportion of the lobbying that goes on, there is a reasonable suspicion that a great many more decisions are being shaped without our knowledge and without the interest groups having to face public scrutiny of their claims and arguments..

There has been no systematic attempt in Australia to monitor just who is wielding such influence—who gains access, in whose interest and with what level of expenditure they pursue their policy objectives. There used to be a very basic register of lobbyists in the Federal Parliament but even this has fallen into disuse. The original scheme was originally set up by executive decision in 1983 following the so-called Combe affair; it followed revelations that former ALP national secretary, and well-connected lobbyist, David Combe, who enjoyed easy access to Labor ministers, had developed a relationship with an official on the Soviet Embassy, later expelled as a KGB agent. To counter the adverse criticism which followed these revelations, the government moved quickly to set up the Lobbyists Registration Scheme, which only required registration of 'a person (or company) who, for financial or other advantage, represents a client in dealings with Commonwealth Government Ministers and officials'. The register was confidential. All that was required of the lobbyists was that they apply to register and describe the key tasks undertaken each time they took on a new client. Whenever they proposed to contact ministers or officials, registered lobbyists were obliged, in theory, to produce evidence of their registration. A parallel code of ministerial conduct providing guidelines for dealing with lobbyists was also introduced, although it did little more than advise ministers to avoid granting special access or privileges to lobbyists because of their background and to avoid dealing with those who were not registered.

The registration scheme never operated effectively because its provisions were ignored and rarely enforced. As Warhurst has pointed out,[1] its success was dependent on registration becoming an accepted part of the culture of the lobbying relationship. It never did. The Howard government abolished the scheme when it took office in 1996. Now all that is required to get into the Parliament as a lobbyist is nomination by at least two MPs. Only by inquiry of the security staff is it possible to ascertain whether a particular individual is on the list. The lists are not published and their clients are not recorded. Nor are their activities monitored.

[1] John Warhurst, 1998, 'Locating the target: Regulating lobbying in Australia', *Parliamentary Affairs*, vol. 51 (4), p. 545

In this, Australia is not dissimilar from most of the western European democracies, although it must be pointed out that most of them do have strict limits on private campaign funding. Most of them do not have any accreditation, registration or codes of conduct to deal with interest groups or lobbyists who seek to influence elected representatives or civil servants, although the European Union has made recent moves, as part of its 'Transparency Initiative', to open lobbying activities up to greater public scrutiny. Surveys by the European Parliament[2] and the Institute of Public Affairs at the National University of Ireland[3], show that only Germany, the United States (and many of its constituent states) and Canada among the developed countries have formal rules and procedures governing the activities of lobbyists. Canada has by far the most stringent and comprehensive regulations, which have been amended on a number of occasions to remove loopholes that have been exploited.

In the past, many of the European democracies seemed to take a relatively benign attitude to lobbying, accepting the partnership between major organisations and governments as a natural part of a system of formalised co-operation. Only in recent years, with the proliferation of interest groups, has the pressure for regulation of lobbying moved up the list of reform priorities. In Denmark, for example, a former Speaker, worried that a substantial amount of lobbying was taking place out of public view, has advocated strict rules on lobby activities and registration, especially given what he regarded as the increasing tendency for former MPs and public servants to become professional lobbyists, deriving unfair advantage from their former positions. The German *Bundestag* is the only EU Chamber to require those groups who wish to promote their interests to the parliament to be registered. However, it is a weak form of regulation which is little more than a public list allowing those registered to be admitted to parliament's building, to appear before committees and to meet with MPs.

The EU 'Transparency Initiative', expressly based on the principle of 'openness', recognises that lobbying is a legitimate part of the democratic system which can assist in

[2] Rules on lobbying and intergroups in the national parliaments of the member states, Directorate General for Research working document, www.europarl.europa.eu/workingpapers.
[3] Margaret Malone, 'Regulation of lobbyists in developed countries: Current rules and practices', Institute of Public Administration. www.environ.ie.

bringing important issues to the attention of legislators, but warns that it can also result in corruption. The EU has suggested that a minimum credible system to prevent such corruption would consist of a registration system, a common code of conduct for all lobbyists and a system of monitoring and sanctions. In the event, the EU seems to have opted for a voluntary system reliant on little more than incentives for lobbyists to register.

Lobbying regulation has been a feature of the US federal and state governments for over a century, although the original federal legislation was vaguely worded and poorly drafted. The result was a plethora of loopholes and exceptions. According to Thomas,[4] the states, rather than federal government, have taken the lead in lobbying regulation. Generally speaking, the US approach has aimed to monitor lobbying activities rather than restricting them. Lobbying regulation typically forms part of a package of transparency and accountability instruments, including conflict of interest and personal financial disclosure laws and campaign finance regulations. The states' systems tend to be more prescriptive, but there is considerable variation on who is covered, the reporting requirements and policing. In 1995, new federal legislation provided for a widening of the definition of lobbyists to include all those who seek to influence Congress, congressional staff, policy making officials and the executive; a requirement to register for those who expect to receive more than $5000 in a six-month period or who expect to spend more than $20 000 over six months on lobbying using their own employees; and twice yearly reports on issues lobbied on, institutions contacted, lobbyists involved and any foreign interests. Observers suggest that, although the Federal lobbying regulation may have done little to level the political playing field, it appears to have improved the openness and professionalism of government.[5] Its major value appears to lie in providing information on who is lobbying whom, information which has often proved useful to investigative journalists in pursuing incidents of cronyism and corruption.

The national parliament which has been most diligent in pursuing the need for MPs and ministers to be transparent about who is knocking on their doors is Canada. Some of this

[4] Clive Thomas, 1998, 'Interest group regulation across the United States: Rationale, development and consequences', *Parliamentary Affairs*, 51 (4), pp. 500- 515.
[5] Malone, 'Regulation of lobbyists in developed countries'

reform has been driven by a series of scandals which have rocked successive Canadian administrations, although it has to be said that equally corrupt practices in other jurisdictions have not galvanised legislators. Nonetheless, control and registration of lobbying are seen as fundamental tools to prevent corruption in Canada and to ensure that government decision-making is not distorted by 'influence peddling'. While lobbying is recognised as legitimate, it is subject to a code of conduct, a complaints procedure and stringent requirements for registration. Such registration goes beyond members of parliament to include public officials. Individuals must register if they are paid to communicate with federal public office holders in attempts to influence—i.e. lobby for—the making, developing or amending of legislative proposals, bills, regulations, policies or programs, and the awarding of grants or contributions. They must disclose the names of their clients or employers, information about their companies or associations, specific information on the matters lobbied, the names of departments or agencies contacted, and the communication techniques used to lobby. Failure to comply may constitute a criminal offence.

The legislation covers three types of lobbyist: consultant lobbyists who are paid to lobby for clients; in-house lobbyists for corporations and in-house lobbyists for organisations. The registrations are available on the Internet at http://strategis.gc.ca/lobbyist. Recent amendments to the legislation have tightened the definitions of lobbying and removed a number of loopholes. In particular, the amendments now require that *any* communication, not just those which are an 'attempt to influence' federal public office holders, will be considered lobbying.

The Canadian system is probably the most rigorous in operation and requires that those who lobby on behalf of organisations in which they work or on behalf of clients to register their names, their firms' names and the issues upon which they are lobbying or will lobby. It also requires information on how many and what sorts of resources are being expended in the lobbying effort(s). Democracy Watch Canada continues to pressure for further tightening, including a requirement for ministers and senior public servants to disclose their meetings and other communications with lobbyists to ensure that all lobbying is tracked and publicly disclosed from both ends of the relationship.

They also suggest that lobbyists should disclose past or current work with governments, political parties or candidates and that lobbyists be prohibited from serving in senior positions on party political campaigns or from doing work for the government departments they lobby. They further argue that tax deduction for lobbying expenses be discontinued and that contingency (success) fees be banned. Such provisions would reinforce the public right to know who is influencing their legislators and would further limit the capacity for 'special treatment' of some interests in breach of the fundamental democratic principle of the inherent equality of voters.

In Australia, by comparison, we're in the dark about these influences. We don't know who is being paid to lobby the government, on which issues, and what departments and agencies they are contacting. Unless the amount is sufficient to trigger disclosure by an MP, we don't know how much is being spent to inform, persuade and cajole our decision makers. The West Australian government has announced that it will require the registration of lobbyists, but the proposals do little more than provide a list of lobbying firms with whom it is legitimate for ministers and public servants to deal. There are no penalties for breaches of the code of conduct, apart from being removed from the register.

Although the Australian government signed and ratified the UN Convention against Corruption, it has so far done little more than meet the very limited mandatory requirements. They have not moved to establish any mechanisms to prevent political corruption or to seriously investigate allegations of such corruption—such as the CCC in Western Australia—nor to scrutinise lobbyists whether paid or unpaid, in house or contracted.

It's time we were able to subject the lobbying process to at least a minimum level of scrutiny scrutiny, to mount any contrary views in the public domain and then judge the decisions of our governments knowing who has been in their ears. Accountability should be more than a fashionable buzz word. The Canadian system would provide a useful starting point to make it meaningful.