MONASH University
Business and Economics

Monash Governance Research Unit

ACCOUNTABILITY ROUND TABLE

Submission to Operation Halifax investigation into lobbying of public officials and public authorities in NSW and the related procedures and regulatory system

Ken Coghill[1] & Julia Thornton[2]

The paper ***Lobbying in NSW: an issues paper on the nature and management of lobbying in NSW* May 2010** identifies 26 issues on which comment is invited. This submission addresses issues amongst those as summarised in the following table.

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[1] Associate Professor, Department of Management; Accountability Round Table
[2] Research Associate, RMIT University; Accountability Round Table

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Introduction

Major issues of accountability are associated with lobbying activity directed at public officials[3] in the exercise of their powers. As with conflict of interest, lobbying has actual and potential ramifications. Lobbying may involved unethical or illegal activity which corrupts democratic principles. Even if conducted legally and ethically, it may create a situation of unequal access to influence government decision-making. Democracy depends on equal representation of all interests, not just those that can afford to make their presence felt.

Victorian Premier John Cain (1982-90) banned contact with lobbyists, but such an absolute ban also has its problems and denies some opportunities for ethical activities.

[3] In this submission, "public official" includes Commonwealth, State or local government public servant, Member of Parliament, Minister of a Government, Mayor, other councillor or other person authorised to exercise legislative, statutory or prerogative powers, unless otherwise indicated or clear from the context.

This submission offers on overview of approaches, suggests a major re-orientation towards the primary objective of regulating lobbying activity, proposes specific regulatory provisions and identifies technology with the potential to greatly enhance the usefulness of data collected through the regulatory regime.

Principles of operation

Lobbying is an activity which in itself is unproblematic. Democracy requires opportunities for interest groups to represent themselves to government.

Parliamentary democracy also requires the trust of the polity in order to maintain its legitimacy. That trust is warranted when all aspects of the political decision making process are clearly understood and equally applied to all.

Decision-making might be represented as having three parts. These can be characterised as firstly an information gathering phase, which may consist of both "pulling" useful information into the process and also of having it "pushed" by those with an interest. The second part of the sequence is a decision-making process in which issues are weight up against each other and against criteria and thirdly there is an implementation phase in which the process is concluded both by its actual implementation and by the flow on consequences of that implementation. These latter may be intended and unintended policy consequences, but they may also include positive and negative political and material consequences for and by those affected.

There are also other more "naturalistic" theories of decision-making than this rationalistic one; see for instance Herbert Simon, Charles Perrow, Karl Weick and theorists following after this psychosocial tradition. While the lessons of a more fully psychosocial approach have some very useful contributions to make to analysis, this simple "input, process, output" model also serves to illuminate some of the points of political decision-making at which corruption problems might occur.

Transparency and accountability of the lobbying process therefore might entail visibility of the "push" of information conventionally by a register of lobbyists or lobbying; publication or publicity of the criteria by which an allocation decision is made, and visibility of the consequences – that is for example where a contract or grant is given after a lobbying representation.

Charles Perrow's definition of an organisation will do well to not only act as a definition of legislative decision making but to highlight two aspects of that process which require governance.

Organisations, he says, may be defined "as intentional human constructions wherein people and groups within and without the organization compete for outputs of interest to them under conditions of unequal power" (Perrow, 1977)p. 101).

Where lobbying becomes problematic therefore is where it interferes with the two elements of greatest importance to trust - that political decision making is not skewed by conflicts of interest or by power asymmetries.

Conflicts of interest

In the context of lobbying, a conflict of interest arises when a public official has an incentive to act in accordance with the objectives of lobbying activity rather than discharging her/his official

responsibilities for the exercise of prerogative or statutory powers. Such an incentive may be to act in favour of satisfying her or his personal desires or interests or those of family members, relatives, friends, other associates, an organisation such as a supporter of a political campaign or a political party.

Beyond this general description, conflicts of interest are not always easily defined or regulated. They may be differently understood and interpreted between cultures. An example of this was observed in Uruguay where, contrary to accepted practice in Australia, a politician acting on behalf of a constituent to solve a problem of for instance, joblessness or in a dispute with local government was seen as a form of corruption. This arose because the member was understood to be properly representing all of his or her constituents, not specific individuals.

The deep ambiguity in what constitutes an appropriate gift or response to a gift has been classically explored by the anthropologist Marcel Mauss (Mauss, 1954)(first published in French in 1923) and subsequently by the French sociologist Pierre Bourdieu (Bourdieu, 1979, 1997). They demonstrated how culturally relative and deeply nuanced such exchanges can be.

These and other works suggest that reciprocity is fundamental to social interaction. Thus conflicts of interest require cultural as well as regulatory management. A climate of honestly and openness amongst political peers, led by example is preventive whereas regulatory sanctions can be “the ambulance at the bottom of the cliff”.

Power asymmetries

Unequal money and resources to devote to influencing opinion

Where money is to be made by an interest group in pursuit of an activity it is usually true that they have the capacity and incentive to divert far more resources to a lobbying project concerning it, than those whose lifestyles, beliefs, health or other non financial interests are threatened. This is because firstly they have the resources to divert to self defence and secondly because those who feel their livelihoods are likely to be compromised no matter where they are on the wealth scale, are far more likely to act than those who are worried about other eventualities, especially when these might be long term.

Power asymmetry of this sort also results in different weight given to different roles that are part of the public sphere. Producer, labour and to a lesser extent consumer roles tend to have greater influence and resources available than client (e.g., disability, mental health) or indeed citizen roles, the latter being those necessary to keep the ordinary aspects of civil society going – volunteers on school committees, Country Fire Authority (Victoria) members, watchdog groups such as Amnesty, “green” (environment action) groups etc.

As an example, Joo Cheong Tham (speaking at the launch of his book Money and Politics (Tham, 2010), at Melbourne University, Tuesday 3 August) asked us to imagine a world in which the homeless hold the Government to ransom by threatening an advertising campaign unless the Government capitulates to their demands for housing.

Unequal access to information

Small community based interest groups are often lacking in knowledge of how the “system” works as much as they are lacking in the resources needed to mount a sophisticated campaign.

Unequal access to decision makers

The essence of democracy is that there is a “necessary correspondence between acts of governance and the equally-weighted felt interests of citizens with respect to those acts” (Saward, 1996). This understanding of democracy complements the ancient principle of fiduciary duty which requires that the public official (public servant, MP, Minister, local government councillor) acts to protect the interests of those who are affected by his/her exercise of prerogative or statutory powers (Finn, 1995).

The fundamental democratic principle is undermined whenever the “felt interests” of some citizens are subordinated and reduced to lesser recognition than those of other interests. This occurs if lobbying results in the interests of the lobbyist’s client or employer prevailing over the public interest.

Solutions to power asymmetries

Lobbying in some form is often necessary to bring grievances and problems of living to government attention. Much useful policy design also arises from public input into the policy making process, so there are good reasons for ensuring that lobbying can take place. It just needs to be conducted so as to not undermine democratic principles.

There is a case here for redressing the balance by providing education on how and who to lobby and assistance to small groups facing opposition from or opposing well funded and resourced lobby groups

Solutions lie in providing for greater balance both by reducing overabundance of power in some cases but also by increasing the power of the under-represented.

Ceilings on spending by private as well as government organisations on influencing public opinion as part of lobbying should also be considered. At their best, these ceilings would be at amounts which make it possible for those who do not earn their incomes from the activity they support to be part of the lobbying process.

A “theory of transparency”

Any attempt to govern lobbying and reciprocity behaviour should be based on a “theory of action” e.g. why is it that we believe that transparency of transaction will improve behaviour; to what extent does it work; what other methods of behavioural constraint reinforce it?

Eric S Raymond in his essay contrasting two different models of developing open source software (Raymond, 1999) espouses an idea which lies at the centre of a “theory of action” as to why transparency works - "given enough eyeballs, all bugs are shallow" - meaning that given enough public scrutiny all defects will be discovered.

This is the reasoning behind the development of a register of lobbying activity, and other efforts at public transparency such as “LobbyLens” (about which more below)

However, information alone is not enough to change behaviour. If it was there would be no obesity, smokers, gambling or unsafe sex.

Exposure methods are reliant on transparency not just as a mode of discovery. Implicit in their "theory of action" is also the idea that discovery will be followed by public opprobrium.

This unfortunately is not guaranteed. One just has to look at cultures and countries in which corruption is accepted as a cost of doing business.

The "exposure – followed – by – opprobrium" model is typical of accountability. "Accountability" as a concept of guiding public life, is based on the idea of an external monitor of behaviour. An external monitor needs to first see the behaviour (because they have no other means to know it) and then to judge it. This idea is so ingrained in public policy thinking that it is difficult to see how it could be otherwise. However it is an idea which has gained prominence only in the last 20 to 30 years.

Historically it stems from the convergence of two similar theories of human nature in accepted in two different disciplines. In economics what is known in Australia as "economic rationalism" stems from the Spencerian idea of "nature red in tooth and claw"(Singh, 2004) and public choice theory which includes notions of individualism, the idea that collective or social action is at base an aggregate of individual actions. It also assumes that people act predictably from self-interest, and that this is calculable, and further that each individual is totally responsible for his or her actions and choices. This economic theory was buttressed by the rise of behaviourism to dominance in psychology in the 1970s. Behaviourism theorises that we cannot ever know a person's internal subjective state. Therefore the only basis for understanding and analysis is the behaviour of the other. The old behaviourist joke used to go 'Two behaviourists meet each other in the street. The first says to the second, "You're fine. How am I?" '

Both theories define away self knowledge and self monitoring along with any idea of an "unconscious" or any subconscious thinking, or indeed "irrational" biological behaviour like addiction. (Biology is presumed to be also rational, by metaphor with the 'rationality" of natural selection producing the 'best' outcome.) Interpersonal and collective 'shared thinking', collective wisdom, group think, culture, peer pressure and other normative social conduct is also ruled out due to the presumed inaccessibility of internal states to the knowledge of others.

While social psychology has long moved past this, if it ever entertained it as a realistic sketch of human nature in the first place, economics has only relatively recently accepted the idea of behavioural economics where economic concepts are tested on actual humans as opposed to the normal empiricism of economics, to test models of abstract forces and movements of aggregate behaviour.

The legacy however in public policy is to understand "accountability" as a form of Behaviourism. So how is it realised?

Another idea implicit in public choice economics is that the more successful a person, the more "rational" they must be because their success arises from their better judgement, so in organisations the weaker, less able person is accountable to the more successful, ergo more rational, superior.

Once established in organisational life the ideas were applied to governance on the precept that government was a (somewhat defective) analogue of a company. Thus the 'superior 'of a parliamentarian to whom he or she is accountable is notionally Parliament and the people.

As a result of his, thinking about how to control the behaviour of parliamentarians tends to start with the idea that the most obvious thing to do is to expose (transparency) parliamentarian's wrongs to the scrutiny (external accountability) of Parliament and the polity.

Internal motivations to do good are unrecognised because they are indeed, internal and the only recognised internal state is self interest. This is why we hear so little today about a desire for public service amongst politicians or among the public service, the old public service ethos. For more on this view of accountability see also (Dubnick, 2006).

One thing we do know from psychology and social psychology is that normative learning takes place. Or to put this another way, if people are presented with a view of how they should behave often enough especially if it is seen as an avenue to success, they will tend to conform with that view of themselves. So now people tend to understand themselves (and others) through this lens and act as if the rationalist view of self interest was indeed the only option. Under these conditions an externalist interpretation of ethical behaviour as relying on (external) accountability has become embedded in social discourse and policy.

Social psychology suggests there is a secondary reason we are so comfortable with this idea. "Attribution theory" (e.g. (Heider, 1958) maintains that we more easily forgive ourselves than others. We blame others on the basis that they must have acted out of internally caused weakness of judgement or personality defects and we forgive ourselves because we attribute a much greater role to the influence of external circumstance on us (see (Jones & Nisbett, 1972).

A holistic approach to promoting ethical behaviour

Therefore along with the externalised behaviour modification idea of accountability and associated "transparency" and judgement methodologies, (regulation, lobbying lists, parliamentary sanctions etc) we should be redressing an imbalance in available levers for producing ethical behaviour, and paying far more attention to what motivates and maintains an internal ethical standard. Education by introducing overt discussion of ethics, conflict of interest and effects of power asymmetry is one accessible possibility.

What is also needed is cultural leadership and peer pressure. Fostering these can be done by creating recognition and incentives for a job well done as "carrots" to balance the "stick" of public opprobrium for exposure of self interested or unbalanced decision behaviour.

Where to from here?

However, problems occur where there is undue influence. Undue influence might be considered to be

- Secrecy or lack of timely and accurate public knowledge about who approaches or is approached by an interest group
- Lack of accurate information available to government about the affiliations and objectives of lobbyists and lobbying activity
- Special interests being able to outspend or otherwise exclude or reduce the impact of smaller or less wealthy groups from making political representation.

Any reform of lobbying activity should take into account

- measures to provide timely, fully comprehensive and accurate information to the public and government about lobbying activity,
- the need to prevent deliberate obfuscation or hiding of information required to be in the public domain
- prevention of excesses of access or influence from richer or more powerful groups,
- transparency and regulation of what is given in association with lobbying activity e.g. donations, information and similar,
- transparency and regulation about what may be received as an outcome e.g. policy change, contracts, approval of land use changes, projects etc, changes to planning regulations, or other measures to advantage the lobbyist or client
- the adverse effects of success fees i.e. direct financial benefit to lobbying interests as a result of their representations

Categorization of approaches:

In the context of the lobbying of government ministers, regulation may be regarded as 'the control, direction or adjustment of a private or quasi-private activity for the purpose of some public benefit.'

Greenwood and Thomas suggest that schemes to 'regulate interest representation or the interaction between private interests and government' focus on the activities of legislators and/or lobbyists (Greenwood & Thomas, 1998)p.488). Attempts to regulate lobbying may be composed of such elements as:

- measures directly aimed at the regulation of lobbying;
- indirect regulations and unwritten rules that resemble regulations;
- schemes aimed at governing the relationship between legislators and outside interests;
- measures based around the regulation of interest groups or their role within governmental structures; and
- co-existing self-regulatory arrangements.

Advantages and disadvantages of regulating lobbying:

The Sixth Report of the House of Commons Committee on Standards in Public Life provides the following useful summary of selected arguments in favour and against the regulation of lobbying activities:

Advantages

- The lobbying registration schemes currently in existence in the United States and Canada provide a great deal of information to the public about the contacts between governments and those trying to gain access to and influence with them. This makes it more difficult for unfair privileged access to be granted, and reduces the opportunity for secret deals between Government and outside interests.
- Compulsory regulation could force lobbyists who do not take part in voluntary schemes to comply with good practice. At present, it is not known how many people and organisations undertake lobbying; if they were required to register and adhere to a code, their activities would be opened to scrutiny, and they could be made to account for them.
- Formality could bring consistency in regulation, which might be preferable to the present wide range of voluntary registers and codes. It could be said to be unfair on lobbyists, and a distortion of the market for these services, that those who abide by the rules of their professional bodies are disadvantaged by the lack of controls on others who undertake the same sort of work.

Disadvantages:

- International experience suggests that the credibility of compulsory regulation schemes is often diminished by amendments to the rules. An elaborate, frequently-changing system could produce unfairness, evasion and bureaucratic complexity. Perhaps partly as a result, such schemes have little impact on the general public - in many countries few people, apart from journalists and lobbyists themselves in search of market information, consult the registers.
- Defining lobbying, and distinguishing it from the simple provision of information, can be difficult. Regulations on lobbyists would have to be framed in such a way as to avoid the unnecessary recording of hundreds of harmless and informal conversations and contacts.
- Currently, “in house” lobbyists – those people employed directly by companies engaged in lobbying - are exempt from registration requirements. While the point above illustrates a net cast too wide, exemption of significant lobbyists from the register shows that regulating lobbyists rather than lobbying activity can also be too narrow.
- Defining a `lobbyist' would also be difficult, given the number of professions now engaged in such work: lawyers, accountants, management consultants and others are employed by companies, charities and other bodies, both `in-house' and on a fee basis, to undertake lobbying work, or work that could be described as lobbying. There is also the danger, as noted in the First Report, that the creation of a category of `registered' or `licensed' lobbyists would give the impression that access to government could only be gained through the employment of that kind of company.
- The self-regulation schemes operated by lobbyists' organisations are already moving towards greater convergence. An important motivation behind this consolidation of standards may be considered to be the need to increase public confidence in their services, which is likely to be at least as effective as any imposed scheme of registration (United Kingdom House of Commons, 2000).

Proposed change of orientation

- The above disadvantages seem to arise from regulating lobbyists rather than **the activity of lobbying**. This could be overcome by regulating of lobbying activity directly (as opposed to indirectly by registration of lobbyists).
- Similarly, an emphasis on disclosure and transparency would reduce the reliance on intervention by a regulator.
- More detailed descriptions of how to accomplish both re-orientations are discussed below.

Proposed system

There are two complementary aspects of this proposed system for reducing adverse effects of lobbying. The primary objective should be to encourage and facilitate acceptable voluntary behaviour by those involved in lobbying activity, whether in lobbying or as the targets of lobbying activities. However, the experience of lobbying in recent times indicates that voluntary behaviour must be under-written by regulation and sanctions where acceptable standards of conduct are breached.

A. Non-statutory measures

Non statutory measures attempt to create a climate of ethical behaviour and to drive "prevention" rather than enforcement. Regulation is a very crude means of influencing behaviour. It is important to foster systems which are supportive of ethical behaviour in addition to providing sanctions for transgression.

Non statutory measures may include a suite of measures such as the following:

For Parliamentarians

Recognition

Ethical behaviour and best practice should be publically recognised e.g. the Accountability Round Table's **Parliamentary Integrity Awards**.

A climate of support

Fostering peer support for ethical behaviour and transparent activity could be through measures such as offering parliamentarians opportunities for voluntarily sign up to a "Charter of public interest honesty".

Training programmes

Training programmes and an associated handbook covering the system should be made available to public officials, to any person wishing to engage in lobbying activity, to any person applying to register as a lobbyist and to any person applying to register any registerable activity (see below). Training programmes should cover the democratic and ethical principles underlying the system, together with the details of its structure and operation.

Public officials appointed to any position which could reasonably be expected to be the target of lobbying activity should be expected to undertake a training programme appropriate to their position e.g. members of parliament should undertake induction and on-going programs which include the above in addition to other matters relevant to their roles.

For Lobbyists

Lobbyists' professional standards

Persons involved in lobbying activities, or intending to do so, should be encouraged and supported to develop and support the application of professional standards, such as through the establishment of a professional association. The Commissioner of Lobbying (see below) should liaise with lobbyists and in particular any such a professional association with the objective of facilitating better standards of lobbying activity and higher standards of related conduct by public officials.

For the public

Public education

Lobbying and associated information should not only be public and easily publicly accessible but also publicised so people – both citizens with an interest and politicians themselves, know it exists how much data is on it, what new information can be found by cross matching within and between data sets, and where to find it.

In order to accomplish this, public interest data needs to be

- Timely – continuous disclosure
- Freely available
    - Easily accessible by print, online or phone
    - Published under a creative commons licence so that it can be replicated for use for educational and analytic purposes

B. Statutory provisions

To provide for instances where voluntary and cultural methods of improving standards fail, a set of sanctions and regulatory requirements should provide robust support.

Legislation should regulate lobbying by providing as follows:

Registration of lobbying

- online registration of each instance of lobbying activity ('registerable activity', as prescribed – see below) via the specific agency section of the agency/minister being lobbied within a "whole of government" website. (The use of an online registration system would avoid cumbersome, voluminous and inefficient paperwork).
- Registerable activity (i.e., lobbying) be defined as representing the private interests of
    - an entity (e.g. a corporation or an association of corporations or an affiliated group of corporations) or
    - a third party or
    - an individual seeking funding, approval or waiver for activities affecting private interests

  to the Government including to any Minister, Parliamentary Secretary, private office staff, departmental staff or other staff within a portfolio, for reward including remuneration, payment or in kind.
- The website be public and accessible "live" i.e. registrations appear immediately upon submission. Ministers (& all private office, departmental and agency staff under their authority) be required to refuse to receive lobbying that has not been registered, but that, having regard to informal opportunities that arise for lobbying, the scheme allow retrospective registration in such cases (excluding appointments e.g. informal lobbying) within a period of grace of 7 days.

Ministerial responsibility

- Ministers be responsible for monitoring of the register to assure that all lobbying activities related to the portfolio are registered and that any person failing to register lobbying is refused further access for lobbying for one year, except with the approval of the Premier.
- Ministers be responsible for ensuring that a record of the content of lobbying activities is kept for each instance of lobbying related to the portfolio.

Legality of charges

- It be an offence for an individual or an organisation to issue a charge (tax invoice or cash in hand!) for any unregistered lobbying activity;
- It be an offence for the client (or related party) of a lobbyist to make a payment to any person who conducts unregistered lobbying on behalf of that client.

Registering lobbying activities

- Each registration of lobbying activity require:
    1. The lobbyist's business name and Australian Business Number (ABN).
    2. The names of the owners, partners or major shareholders of any corporation/partnerships/etc of lobbyists, as applicable.
    3. Dates and details of positions held within any political party or as an elected representative.
    4. Contracts with or approvals by any government department or other entity previously awarded to the client or related entity on whose behalf the lobbying is intended or has occurred.
    5. Any payments made to the governing political party or coalition, whether by way of donation or other fund raising.
    6. The contact details: name, phone number, fax number, email address. (These contact details would be used for communication with the lobbyist.)
    7. Website address (if any).
    8. The names and positions of all persons employed, contracted or otherwise engaged by the lobbyist or her/his employer to carry out the lobbying activities.
    9. The names of client/s for whom the lobbying activity is to be (or was) conducted, whether providing paid or unpaid services as a lobbyist.
    10. The name of the Minister or other person/s lobbied and the subject matter/s of the lobbying activity.

Register of Lobbyists

- Persons conducting lobbying activities be required to register and entitled to automated entry of details, especially 1-6 above. This requirement should apply to each of the three categories identified i.e.
    - Consultant lobbyists (lobbying firms)
    - Enterprise lobbyists (lobbying for a commercial firm by which employed), and
    - Organisational lobbyists (lobbying on behalf of an ideology/ cause / industry.)

Registration procedures

- Registration on the Register of Lobbyists should be subject to a good character requirement; the Commissioner of Lobbying to have absolute discretion to assess applications to determine whether an applicant is of good character.
- The Commissioner of Lobbying to have responsibility under own motion powers to issue a "show cause" why registration of a lobbyist should not be terminated for apparent breach of the Act or regulations and to terminate registration in the absence of a satisfactory response, subject to appeal under administrative law.

Quarantine Period - former public office holders

- Five (5) years must pass before former Ministers, Parliamentary Secretaries, their personal staff, and senior public officials can "engage in lobbying activities" in areas in which they had "official dealings". (The Code is not breached by a former Minister joining a lobbyist immediately on retirement so long as he or she does not engage in such communications.) Acceptable exceptions to the ban on communications include
  - communications with Ministers or Parliamentary Secretaries in their capacity as local members in relation to non-ministerial activities,
  - communications in response to calls for submissions, and
  - communications of a "grassroots nature".

Code of conduct and contracts

- Regulations to be made for a Contact with Lobbyists Code, to be prepared by the Minister responsible for the Act in consultation with lobbyists
- Lobbyists to be required to sign a copy of the Contact with Lobbyists Code to indicate their acceptance of its requirements before they can be placed on the Register of Lobbyists
- Regulations to prescribe standard provisions in Contracts between lobbyists and their clients which set out the nature and extent of the permitted scope of lobbyists' activities and in particular indicate that it is not appropriate for a lobbyist to seek to subvert the public interest while advancing the private interests of individuals or organisations.
- Gifts of more than token value (prescribed by regulation) and donations by any person conducting lobbying or their client or employer to any person lobbied should be banned.
- Any person or organisation conducting or commissioning lobbying should be prohibited from organising or arranging the organising of fundraising activities and campaigns for public officials, political candidates, or political parties.
- Success fees should be banned, using the Canadian model. The Canadian model should be fully adopted to cover success fees in respect of anything that lobbyists might achieve in the course of their lobbying activities, including making communications and arranging meetings. Legislation should include penalties for breaches of its requirements, as in the Canadian legislation.
- Any person serving on a government committee or board would not be permitted to "engage in lobbying activities" in areas in which they have "official dealings" or for five (5) years after their appointment ceases.

Donations and Gifts to Political Candidates and Parties

Donations and gifts to political candidates and parties are inextricably intertwined with lobbying. Accordingly they should be covered by this system or complementary legislation.

Donations provide the incentive for granting favourable treatment. By creating an expectation of reciprocation of some kind, they undermine perceptions of integrity in the exercise of public powers and hence the legitimacy of government.

Corporations are currently the major source of funds for political candidates and parties. Corporation board members are bound to act in the best interests of the corporation. It follows that corporations should not donate to political candidates and parties except to advance the interests of the corporation. Corporate donations and gifts are therefore orientated to seeking to manipulate public policy to the benefit of special interests except where they represent a misuse of corporate funds according to the desires of the corporate office-holder.

If private funding (i.e. donations and gifts) to political candidates and parties is to be permitted, it should be limited to membership dues and donations in all forms by natural persons totalling not more than $1,000 per person in each calendar year. Such funds could be applied to a variety of purposes, for example, administration, research, training of candidates and so on during the period between elections but not during the three months immediately prior to the general election.

All donations, and commitments to make donations, of a known or potential value of $1000 or more should be disclosed and the value of any donation made over the legal limit should be forfeited to the Consolidated Fund. Both donor and recipient should be required to disclose the donation or commitment and its original source. Disclosure of donations or commitments should be made by both parties within two working days of their receipt and reported to the relevant government agency. Electronic lodgement of the information and verification of it should be mandatory and facilitated.

Direct and indirect donations by corporations should be banned absolutely. Donations by organisations existing to serve the social and political interests of their members should not be limited, consistent with the argument put by Joo Cheong Tham (2008) in '`A Case Against Uniform Contribution Limits', Democratic Audit Discussion Paper 6/08'.

Political Campaign Expenditure

Unlimited expenditure seeking to influence policy and political party support has led to an 'arms race" with political parties, and recently business interests, attempting to outgun each other through paid advertisings. As it escalates, the only limit seems to be the funds available, with clear advantages to those with greatest resources.

Caps on expenditure on political campaigns, including indirect lobbying such as advertising seeking to influence public policy, should apply to all participants in the political process. Decisions about what materials are considered "political" could be made by the electoral commission as the currently make similar decisions about printed electoral leaflets. The process would be subject to scrutiny by the Auditor-General.

The aggregate expenditure cap to all political candidates and parties should be limited to the highest previous level of public funding and be increased periodically by the CPI increment. Caps for different types of participants should reflect the proposal above for a ceiling on the amount received such that the governing party or coalition should not receive more than the Opposition party or coalition

All campaign expenditure should be caught by the cap. It is important that the caps should apply throughout the entire electoral cycle paralleling disclosure regimes for contributions.

All expenditure should be subject to disclosure subject to aggregation similar to that provided in reporting by public sector agencies. Continuous disclosure should apply throughout the entire electoral cycle paralleling disclosure regime for contributions.

Expenditure on indirect lobbying such as advertising seeking to influence public policy in the interests of one or more corporations should be subject to expenditure caps, except in the case of organisations existing to serve the social and political interests of their members, consistent with the argument put by Joo Cheong Tham (2008) . The caps should not interfere with freedom of expression but should ensure that such expenditure does not undermine or compromise democratic principles.

Commissioner of Lobbying

Authority to administer and enforce the Lobbying Act and the Lobbyists' Code of Conduct should be through an Independent Office of the Parliament, the Commissioner of Lobbying, similar to provision in the Canadian Lobbying Act 2008.

Audit

This system to be subject to annual audit and report by the Auditor-General.

Making effective use of lobbying data

A good regulatory regime addresses the problem of timely, comprehensive and accurate data. Registration of lobbying activity involves monitoring behaviour rather than persons and therefore following a wider range of data than does a simple register of lobbyists.

But the ability to query such data and the extent of public access to it should be separately addressed.

In order to achieve its objectives of greater integrity of government, the proper regulation and disclosure of lobbying activity will require that data collected is accessible in a readily useable form. This is an operational rather than legislative matter. It is relevant both to

- the public to enhance the accountability of government, and
- Government to provide it with more complete information about persons and organisations which are lobbying it.

The Australian Government 2.0 Report has proposed a general approach which recognises the importance of using modern technology to facilitate access. However, making this user friendly is a further step.

An example of how new software products can used to greatly improve the usefulness of such large and complex data sets was demonstrated in 2009. The particular example was Lobby Lens. It is a type of platform for integrating lobbying information databases, and can be linked to a wiki for public input and to an analytic dashboard for deeper queries. Figure 1 (next page) shows three screen prints from the one dynamic site, with the two insets created simply by placing the cursor on the specific entity and dragging it to the place shown.

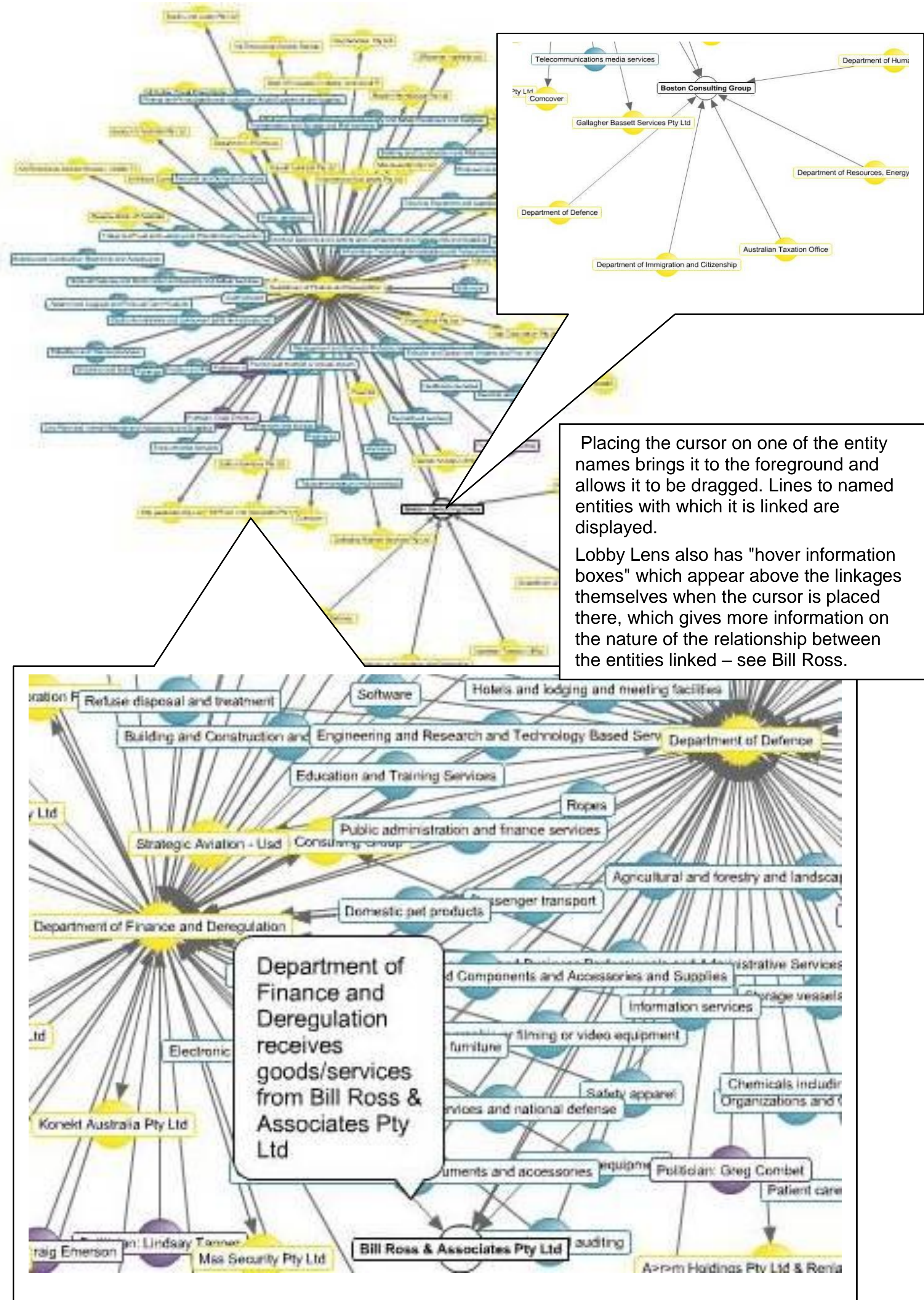
The useability of the register of lobbying activity data could be greatly enhanced using such technology. Data entered with the registration of lobbying activity could be fed into Lobby Lens automatically and would become immediately available to Government and the public.

The power of an application such as Lobby Lens lies in its ability to integrate data from a number of sources, government contracts, business activities, and political responsibilities. Data sources for Lobby Lens as it now exists include:

- AusTender Contract Notices
- Australian Business Register
- Federal Lobbyists Register
- State Lobbyists registers (no territories have registers)
- ABS Postcode Boundaries
- Open Australia Members of parliament and portfolio responsibilities
- Australian Federal Electoral Boundaries
- Open street map

Thus the that data not only shows lobbying relationships but reveals other activity likely to influence political decision-making and also shows up potential conflicts of interest in the reverse direction (from politician/public servant to lobbyist).

Figure 1. Lobby Lens Source: (Lobby Lens, 2009)



Copyright

The use of databases such as those used by LobbyLens is hampered by copyright issues. To overcome this limitation, Creative Commons licensing of government data as recommended by the Government 2.0 report, would allow data to be used by third parties without the danger to transparency of requiring payment for data sources.

Copyright issues that require to be addressed include the company details held by ASIC and ownership information on share registers. It also includes the information on changes to the public service notified by the Public Service Gazette currently not openly licensed. Registers of interests (members of parliament, ministers, senior public servants) should be published in a data shareable form. Other non-contract forms of government spending such as grants and stimulus projects should likewise be openly licensed.

Any other forms of data currently unavailable, such as details of international suppliers to government which don't have ABNs, should also be required to be provided.

Other sources

Data such as donations to political parties and candidates should be integrated into this system. Technically, this should be possible within one or two working days of receipt of donations, but disclosure regimes presently rely on periodic (e.g. annual) reporting. Reform of the regulation of lobbying should be taken as an opportunity to reform the reporting and disclosure of gifts and donations to politicians and public servants.

Filling gaps in data could become more possible through the addition of a wiki for public comment, "crowd-sourcing" and whistle-blowing. While this would necessitate checking of such information for factual accuracy, (normally the job of the department which keeps the relevant register), it has the capacity not only to add a valuable source of information to the overall picture but to generate public interest in the issue of lobbying transparency. Along with regulatory penalties this would provide an important check and balance where important information may otherwise remain hidden.

Conclusion

This submission sets out an extensive discussion of underlying principles, which are supported by research and theory. It proceeds to review features of regimes for regulating lobbying, which commonly rely on the registration of lobbyists. Deficiencies in the latter approach are identified.

The submission proposes a comprehensive system incorporating both soft (informal) and hard (formal) regulation.

It concludes with discussion of innovative information technology, still under development, which has considerable potential to enhance the proposed system. The discussion canvasses related issues which would affect the effectiveness of the system.

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