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1.

LOBBYING DEFINED AND OBSERVED

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Introduction

Lobbying has evolved over a very long period, as long as nations have had governments. The people who undertake lobbying, the lobbyists, require definition in their own right – for the type of lobbyist often determines the lobbying activity undertaken.

Many pages and much discussion have been given over to what constitutes and defines lobbying. Many will argue, with much justification, that even the terms lobbying and lobbyists are regarded as components of the broader field of public relations. In fact, while we can apply many of the functions used to define PR to lobbying and lobbyists, the most fundamental interpretation of the terms' parameters indicates that lobbying involves communication and government. How and by whom are the key elements of this chapter.

What is lobbying?

The critical and most obvious component of lobbying is the interaction an entity has with government. The executive, parliament and bureaucracy are the key players in the field. On the opposing side, to extend a sporting analogy, are the lobbyists – who are identified or labelled, singularly or plurally, by a variety of names: pressure groups, policy consultants, tariff consultants, public relations consultants, interest groups, special interest groups, industrial and professional associations, government relations managers, public affairs managers and, Lloyd's qualified term, the 'political lobbyist'.

All these nomenclatures require further explanation – some are used interchangeably, others are now an historical term only, and some fall from the common language only to reappear at a later date. Of all, the oldest and most widely recognised is lobbyist and lobbying. Lloyd (1989)

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states that the term 'lobby agent' was first used in Westminster in the mid-17th century. In the US, Schriftgiesser (1951) writes that the famous American journalist H L Mencken, the Sage of Baltimore, traced the first use of the word lobby, as we currently understand it, to Washington DC in 1829. At that time the term lobby-agent was in use but it was shortened by journalists to lobbyist by 1832.

It has been suggested that the concept of lobbying – of seeking influence among the powerful – is as old as government itself. Lloyd (1989) cites examples of lobbying from the Old and New testaments – the most famous pressure group being those who petitioned Pontius Pilate to crucify Jesus Christ!

In the US the activities of lobbying were recognised before the term was coined when, according to Schriftgiesser (1951), 'a little gang of painted-up merchants pushed British tea into the salt water of Boston harbor' (p. 4).

So the pedigree of lobbying activities is long and colourful. As the Western form of parliamentary democracy has evolved and expanded among nations it seems that lobbying has been ever present on this journey. It is by its activities, its parts, that we can define and recognise lobbying most clearly and view the changes.

Defining lobbying

In reflecting on the turmoil of lobbying in Australia in the 1980s Harrison wrote: 'then, as now, it has been impossible to clearly define a lobbyist' (2011, p. 865). It is a difficult task for there are definitions and sub-definitions almost requiring a taxonomy of the species – but what to call the species? As noted above, the position descriptions given to lobbyists are many and varied, and each of these also carries with it a particular definition. Macnamara (2012) includes lobbying under a heading of public affairs and government relations. Sekules subtitled his 1991 text, *Lobbying in the nineties*, 'the government relations'. Contemporary definitions of lobbying contain similar elements; Franklin et al. (2009) define lobbying broadly and boldly as a 'consistent and directed attempt to influence government policy' (p. 126). Warhurst (2007, p. 9) calls it a 'process by which non-government sector – business, interest groups, representative organisations – seek to influence government', although this definition excludes and ignores lobbying done by semi-government bodies over the decades, such as universities or, specifically, Victoria's TAC, CSIRO, and, in a previous era, TAA or the Commonwealth Aircraft Corporation. Grunig and Hunt state

that 'at its purest, lobbying means providing sufficient data to a legislature so that all of the facts can be known before a vote is cast' (1984, pp. 215–16). The activity is then as significant as the entity doing the lobbying. The nature of these entities has significantly altered over recent decades. The noted British political scientist S E Finer in his seminal text *Anonymous Empire* – a study of the lobby in Great Britain – terms the lobby as:

the sum of organisations in so far as they are occupied at any point of time in trying to influence the policy of public bodies in their own chosen direction; though (unlike political parties) never themselves prepared to undertake the direct government of the country (1958, p. 2).

Finer's distinction clearly states who is the lobbyist – organisations. At this time and for many years, in Australia and the UK, this was to be the case but, as various contributors to this volume note, their role has diminished in recent decades.

The lobbyist is a critical definition, within which many authors have sought to draw distinctions, including Finer. As we noted lobbyists go by many names, and authors and commentators have sought to distinguish between them by the type and activity of lobbyists and even the issue on which they lobby. Finer finds the term pressure group misleading, due to the implied nature of pressure as a threat, and because the role of some organisations is to provide a number of services and 'intermittently' to provide pressure. He goes on to state that interest group is too narrow and lobby adequately describes both groups. Finer's 1950s UK perspective is based around the functions of industrial and professional associations as the key lobbyists to government and precedes the rise of a more active democracy. In the 1970s and early 1880s *The Age* newspaper used the terms pressure groups and single-issue groups interchangeably but never applied these terms to the organisations to which Finer was referring.

Lloyd cited Jaensch's 1981 differentiation of the three most common terms: interest groups, 'a formal or informal group of people with common interest, attitudes or aims'; pressure groups, a 'formal organisation of people who share one or more interests and objectives and who seek to influence the course of public policy'; and lobby, 'pressure on a legislature and individual legislators in achieving their aims' (Cullen & Lloyd 1991). While Lloyd found these definitions unsatisfactory (pressure group's flexibility making interest group redundant), they serve as a reminder of the progression in our

thinking. Jaensch discounts lobbying as a US term, but we shall see it is now universally used and understood as the definitive term when one speaks of communication, influence and government (Cullen & Lloyd 1991).

We shall examine the rise of lobbying regulation later in this chapter but it is worthwhile to consider the 2008 Australian Government's Lobbying Code of Conduct which implicitly defines the term through its recognisable activities rather than the groups and organisations who lobby:

communications with a Government representative in an effort to influence Government decision-making, including the making or amendment of legislation, the development or amendment of a Government policy or program, the awarding of a Government contract or grant or the allocation of funding (Lobbying Code of Conduct).

Even now, while lobbying itself is an activity that is recognisable and could be defined by many, those who undertake the work of influence and communication with the government (the lobbyists) still go by a catalogue of differing terms. Some of these are professional and some amateur, as is the way they approach their actions.

We can of course give proper names to the lobby groups that exist in Canberra currently. Among the leading professional and industry lobbying organisations some can be found on the website, the Power Index. They include: The Pharmacy Guild; Australian Bankers' Association; Insurance Council of Australia; Australian Industry Group; Minerals Council of Australia; Clubs Australia; Australian Medical Association; and the Australian Food and Grocery Council. These are the organisations Finer wrote of 50 years ago; however, he ignored the lobbyist in his treatise. It is these individuals, who largely work out of consultancies – mostly, as we shall see, in the area of public relations – that have changed lobbying practice recently.

Despite the presence of industry and professional lobbying organisations some companies and individual organisations also choose to employ their own lobbyists – government relations or public affairs personnel. Deakin University's successful bid for Victoria's first regional School of Medicine, while assisted by local Geelong-based PR consultancy, Redstick, also employed its own government relations manager for the several years preceding their bid. This is an example that once again raises questions of Warhurst's (2007) definition.

Lobbying and democracy

A 1982 booklet published by *The Age* newspaper, titled 'Pressure Groups', states on its cover blurb that 'lobby and pressure groups are an integral part of Australian political life' and questions whether 'single issue campaigns (are) a threat to democracy'. For many observers this question applies not just to the single issue (interest) group but to all involved in influencing government. In this publication many of the articles are concerned with lobbying and election campaigns and how an issue can be used to skew the voting intentions of an electorate. This practice now seems to have progressed alarmingly in the era of the 24/7 media cycle and the constant election campaign. One need only look at the activities of Clubs Australia against poker-machine reform in marginal Labor seats in New South Wales in 2011.

Lobbying as threat to democracy has been a constant cry – Finer refers to 'unrepresentative leadership', the single issue 'zealots' identified in *The Age* editorials were accused of punitive and punishment politics. Stockwell (2005, p. 213) has argued that the growth of public affairs (of which lobbying is a key function) has 'altered the nature of representative government, making government...more beholden to the special interest'.

However, in its defence, Lloyd, in his magisterial introduction to Cullen's *No Is Not an Answer* (1991), queried:

why representation through lobbying remains an object of suspicion, while representation through the party system is respected as fundamental to democracy...the evolution of party government has been no freer of disreputable elements than that of political lobbying.

These concerns of lobbying being an undemocratic process have dogged the work and, as we shall see, reputation of those engaged in the function.

The longest-serving member of the US Senate, Robert C Byrd, puts it very colourfully:

Winding in and out through the long, devious basement passage, crawling through the corridors, trailing its slimy length from gallery to committee room, at last it lies stretched at full length on the floor of Congress – this dazzling reptile, this huge, scaly serpent of the lobby (1989).

Byrd also describes lobbying as a 'much maligned term', stating that even the industry avoids it, preferring public affairs or government relations.

A UK House of Commons Public Administration Select Committee investigation into lobbying found ‘a genuine issue of concern, widely shared and reflected in measures of public trust, [is] that there is an inside track, largely drawn for the corporate world, who wield privileged access and disproportionate influence’ (House of Commons, 2009, p. 3). The summary goes on to note a key issue that gives rise to and supports these criticisms – lobbying takes place in private. The wider community, the voters, are unaware of the deliberations, their purpose or even their success.

Despite these claims many agree on the necessity of lobbying; they do not term it as a lesser evil but as a necessity. MacCallum wrote in 1979 that ‘lobby groups in Australia on the whole perform a reasonable function; they are advocates rather than twisters’ (*The Age*, 1982). The British inquiry into lobbying noted it was a ‘legitimate and necessary part of the democratic process...’ (House of Commons 2009, p. 5). Indeed, it has been claimed that democracy is reinvigorated through the activities of lobbying because ‘lobbyists have become the conduit between government and a diverse range of interests in society’ (Stockwell 2005, p. 224).

Lobbying and public relations

Like all functions whose prime activity is communication, lobbying fits easily and logically in the public relations field. Public relations’ claim to lobbying is further strengthened by many authors and practitioners who view persuasive communication as a key function of lobbying. The natural home of the independent lobbyists (as opposed to those organisations that lobby on behalf of their industry/profession) is then within a public relations consultancy. This relationship is further strengthened and enhanced by the work undertaken in public relations. Berry (1992), in his paper on UK lobbying, succinctly identifies that all lobbyists offer the services of monitoring and information for clients and a range of ‘opinion-forming services aimed at directly influencing legislators and civil servants’. Some lobbyists, Berry goes on to state, ‘seek to place lobbying of government within a wider public affairs or PR context’ (p. 220). He seeks to differentiate between small (solo practitioners) and large lobbying outfits – the larger invariably part of a PR company, and that ‘lobbying campaigns are often integral parts of a wider public relations strategy, involving media relations and corporate communications’ (p. 221).

As we have seen, a number of synonyms for lobbying fall within the sphere of public relations. The specific PR practice that absorbs lobbying

is generally termed government relations or public affairs. Former BHP Corporate Affairs Officer Judy Ryan recalled that in the early 1980s, Jock McGregor held the title of Chief Tariff Officer and by '1985/86 the expanded function had become "Manager Corporate Affairs (aka Government relations)"' (Ryan 2012).

MacCallum (1979) noted that government relations involved 'obtaining information and lobbying'. One can begin to see the taxonomy develop! Most university introductory public relations courses and texts will include sections on public affairs, of which the focus and significant content will be on lobbying.

Lloyd writes of the symbiosis of public relations firms and lobbying, especially in terms of independent lobbyists, i.e. those public relations practitioners employed by consultancies such as Eric White and Associates (EWA) and IPR in the 1960s and 1970s, and by modern day equivalents such as Hawker Britton, Kreab Gavin Anderson and Barton Deakin. He writes with great certainty that 'there are very few ventures in political lobbying which do not have a PR element' (Cullen & Lloyd 1991, p. 43).

Knott (The Power Index), writing of current lobbying practice, observes that although there are still 'shonks' about, lobbying is now more than just 'opening doors and cashing in favours', and it is now a 'sophisticated industry from polling...modelling...media manipulation'. Yet in 1961 Peter Golding of EWA wrote of the ignorance of government relations in Australia business, the practice was even then beyond 'knowing the right people' but about 'good knowledge of departmental procedures, skill in presenting a case to government and experience of government decisions' (p. 51). It would seem that this skill base of Menzies-era government relations practitioners differs little from their contemporary colleagues, but perceptions and stereotypes still exist.

From the 1950s Australian companies sought regular and rapid monitoring of parliamentary and administrative information and, apart from sole lobbyists, this function was largely taken over by PR consultancies. Combined with the skills that Golding identified, it became increasingly 'apparent that there were close links between PR activities and lobbying activities; in many respects the two processes were complementary' and 'there were clear advantages in linking them' (Cullen & Lloyd 1991, p. 11).

Clearly, the practices first alluded to by Knott seem to be of an era more aligned with the 'monster' from Byrd's post bellum Congress than Australian practice of, at least, the last 50 years.

Lobbying Canberra

We have noted that lobbying is as old as government itself. It is then no coincidence that the very choice of Canberra as the site of Australia's federal parliament was a much-lobbied decision. The attempt to resolve the choice before the first federal parliament sat was thwarted as 'the struggle by pressure groups prevented a speedy decision' (Souter 1988, pp. 103–4). The Premier of New South Wales and, concurrently, Home Affairs Minister in the first federal government, Sir William Lyne, favoured the towns of Albury or Tumut, in his own seat, as the location and deliberately had MPs tour alternative sites in the doldrums of winter (Souter 1988, p. 105). It took nine years and much lobbying by vested interests before the choice of Canberra was made.

Australia's history of colonies to Commonwealth, government-owned enterprises and initiatives has led to a different perspective and development of lobbying. Early lobbyists in Canberra (or Melbourne, seat of the Commonwealth Parliament from 1901 to 1927) sought government's ear for local issues, funding and so on. The one outstanding and distinct development of Australian lobbying was tariffs.

The colonies of Australia were either firmly protectionist or free trade, and within states and, indeed, even political parties, both views were vigorously represented. Tariffs were how the Commonwealth was to support itself; it was not until the Second World War that the Commonwealth took over income tax. The trick then of Barton's government was to legislate so that the 'tariff [was] high enough to provide necessary revenue, but not so high as to alarm free traders' (Souter, p. 67). Every imaginable item was considered for tariff or exemption – if horse was exempt from tariff what about camel hair? The debate went for over one hundred and seventeen days 'since different interest groups objected to almost every item scheduled for customs duty [tariff]' (Bolton 2000, p. 32).

This role and power was formalised by the establishment of the Tariff Board in 1921, 'empowered to conduct inquiries into claims by local industries to be protected by tariff from overseas competition' (Horne 1964, p. 143). From this base the tariff agent came into being, and in the Depression of the 1930s it was these individuals who went to Canberra to lobby for tariffs on behalf of struggling industries in the manufacturing industries.

Lloyd notes the use and understanding of the difference between pressure groups and lobbyists in the late 1940s and early 1950s. It soon became apparent that institutional lobbying in the form of industry and professional

associations was growing. Critical to this development was the growth of the federal government as it assumed 'more functions and moved into legislative areas. As a result the policy content and administrative structure of federal government began to expand' (Cullen & Lloyd 1991, p. 10).

Horne, in a chapter called 'Power' in his seminal book *The Lucky Country*, has a section devoted to pressure groups and writes that the big public pressure groups' aim is 'group advantage' (p. 194). He writes further of the 'sugar lobby', 'wool pressure groups', 'churches', the 'most skilful pressure group, the R.S.L.', the major corporations of Australia – CSR and BHP – and the institutions and organisations described by Finer. At this time these groups, along with the independent tariff agents, were joined by the first of the PR consultants – the government relations expert. Eric White and Associates (EWA) opened its Canberra office in 1961, the first PR consultancy to do so. However, it had been lobbying the federal government on clients' behalf for at least a decade prior. When White left the employ of the Liberal Party in 1946, with Menzies' support, his aim was to 'use his political experience and contacts for the benefit of commercial clients...he saw a particular role for public relations in helping clients communicate with government' (Golding 2004, p. 179). The election of the Menzies government in 1949 and the 23-year Liberal Party reign assisted in the success of EWA as one of the world's largest public relations firms.

Lloyd states that the arrival of the private political lobbyist in Canberra occurred in the late 1960s, but much work was undertaken at least a decade prior. In 1957 EWA's client, the Commonwealth Aircraft Corporation (CAC), faced closure by the federal government that sought to purchase planes from the US or UK. EWA developed a major position paper on the state of Australian defence resources prior to the Second World War and the consequences of relying on imported defence material. Judicious distribution of their research, which included ex-service MPs and media placement of the key findings, suddenly made this a major public issue. In the Cold War climate their messages resonated, and politicians who previously had ignored the plight of the CAC were suddenly employing phrases from their research and 'making fiery speeches in the parliament and their party rooms' (Golding 2004, p. 187).

Another example of a classic Australian type of lobbying was that undertaken by the commissioner of the Snowy Mountains Hydro-electric Authority. The scheme was a Labor government initiative which commenced in the final year of Labor's tenure. Although seen as a great feat for the

nation, Prime Minister Menzies was reluctant to give it his full support as it was linked to the Labor Party and, in 1953, considered closing it down. Commissioner Hudson ensured, through useful public relations tactics and selected lobbying, that 'the political credit would accrue to Menzies from the Snowy scheme' (McHugh 1989, p. 118). These two examples provide an Australian perspective, as in both cases it is government statutory authorities lobbying government.

The most significant change to lobbying occurred with the arrival of the Labor government in 1972 under Prime Minister Gough Whitlam. There was growth in lobbyists as business sought to work with a party out of power for 23 years. As George Kerr of IPR's Canberra office stated: 'Life was somewhat easier under the old system' (*The Lobbyists* 1975, p. 16). By 1974 many companies went beyond their associations and employed freelance lobbyists (*The Lobbyists* 1975, p. 5) and the days of the tariff agent were numbered when Whitlam reduced tariffs across the board by 25%. The end of tariff-supported industry occurred under policy implemented by the Hawke government in 1988.

It was in the 1980s that the growth and role of lobbying came under public and parliamentary scrutiny. The Combe–Ivanov affair, as it became known, was a full-blown spy story that eventually changed the way lobbying was done in Canberra. Former federal ALP Secretary turned lobbyist David Combe's links with the Soviet Embassy official and covert KGB operative, Ivanov, proved embarrassing for the government as ASIO investigated Ivanov and inter alia his attempts to recruit Combe. The affair itself resembled a Le Carré novel and within 18 months three books were published about the doings of Combe and Ivanov – keeping the issue alive in the public eye.

Apart from a government-appointed Royal Commission to investigate the matter, the government used the incident to turn its gaze on lobbyists. Both Lloyd (1991) and Sekules (1984) believe lobbying in general was a scapegoat and a distraction tactic for the newly elected government of the day. A government paper, 'Lobbyists and the Australian Government and Parliament', concluded that a 'more public and open system for conducting the relationship between lobbyists...and government and parliament' (Cullen & Lloyd 1991, p. 23) was required. The Lobbyists Registration Scheme, as it became known, was introduced in 1983, and it is worth noting that Lloyd stated in 1991 that its 'provisions proved to be in practice to be only a minor impediment' to the work of lobbyists. No surprise that by 1996 it was abolished and that in the appendix on lobbying activities

outside the UK the 2008–2009 House of Commons report on lobbying stated the scheme was ‘widely acknowledged to be ineffective in respect of adherence to its provisions and the lack of effective enforcement’ (House of Commons 2009, p. 70).

Lobbying continued to battle with an image problem through the early 2000s, brought upon not by the professional lobbyists but by ex-politicians turned lobbyists. In particular, disgraced former Western Australian Premier Brian Burke and his lobbying partner Julian Grill brought to light a practice that has always been the chief concern of any critic of lobbying, that of ‘special or privileged access’. The House of Commons report noted that between 1996 and 2008 there was concern in Australia about ‘former high level politicians becoming involved in lobbying in areas directly relevant to their past responsibilities’ (2009, p. 71).

Former Howard government Health Minister Michael Wooldridge approved a grant to fund the building of offices for the Royal Australian College of General Practitioners (RACGP) in Canberra a week before the federal election was called. Dr Wooldridge, who left parliament at the subsequent election, agreed to become a consultant to the College several weeks later and began work at the start of 2002.

After details of the grant emerged, Dr Wooldridge was accused of having a conflict of interest in allocating the money, prompting the College to distance itself by terminating his contract. Although he was cleared by an Auditor-General’s inquiry, these arrangements seemed inappropriate to the broader public and critics. Similarly, former Agriculture Minister Peter McGauran’s appointment as CEO of Thoroughbred Breeding Australia within days of his parliamentary resignation can be seen as too close for comfort.

In 2008 the Rudd Labor government’s Lobbying Code of Practice came into force. It resembled a 2006 code established by the Western Australian Parliament in the wake of Burke’s lobbying efforts. This code applies to those who lobby on behalf of a third party, not the government relations, in-house practitioner and the organisational lobbyist (as so well and long ago defined by Finer!), and only covers ministers and parliamentary secretaries. It aims to ensure that lobbying activities meet ‘public expectations of transparency, integrity and honesty’ (Lobbying Code of Conduct).

So just who is regulated? According to the Code of Conduct register, as of January 2012 there were 291 firms, employing 634 lobbyists representing 2,004 clients, from AAMI to Zurich Financial Services. The number of all categories keeps growing and a recent *Canberra Times* article estimated the

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industry to be worth \$1 billion a year (Cronin 2011). It should also be noted that organisations such as the Pharmacy Guild of Australia, National Farmers Federation, and the Australian Industry Group are not required to register.

When compared to other major Western democracies Australia's lobbying industry is proportionate to our population. In the UK recent figures from 2007 estimate that there are about 14,000 people directly involved in the activities of government relations with an industry worth of about £1.9 billion (Parvin 2007, p. 10). It would be reasonable to assume, with the change in government in 2010, that these figures may have increased. It is interesting to note that Prime Minister David Cameron reversed the trend observed here and went from working in public affairs to politics! The UK parliament is proposing a statutory Register of Lobbyists to be introduced in 2012.

In the US lobbying expenditure in the last ten years has doubled to US\$3.27 billion. The growth in lobbyist numbers peaked in 2007 at 14,856 and is now at 12,592. This number is slightly less than the total for 1999 of 12,939 (OpenSecrets). Regulation of lobbying in the US has been present in some form or another since the early 1900s (Byrd 1989). Unique to the US is the development of political action committees (PACs) which, according to Byrd:

are formed by special interest groups for the purpose of funneling contributions to the political campaigns of members of Congress and other officeseekers, and they constitute a subtle but sophisticated form of lobbying (1989).

The Lobbying Act was introduced in 1946 and updated in 1995 to the *Lobbying Disclosures Act (LDA)*. In contrast to Australia the *LDA* provisions include as lobbyists those working for corporations and organisations.

There are many who view lobbying to be a crude exercise in networking, as we have seen, but this chapter has also shown the growth and development of lobbying and government relations as a strategic and disciplined practice that has always required those skills Peter Golding wrote of in 1961 and that Eric White practised in the 1950s. It is a complex activity that, by and large, lobbyists, professional and industry organisations, as well as public relations firms, practise on a daily basis in the nation's capital to the benefit of many.

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