BRIEF REPORT

Australian lobbyist registers are not serving the purposes they were designed for

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Abstract

Introduction and Aims. There is widespread concern about the nature, extent and impacts of lobbying by industries selling unhealthy commodities, which threatens public health and undermines important democratic processes. In the last decade, all Australian jurisdictions (except the Northern Territory) have established lobbyist registers with the stated objective of increasing the capacity of government and the public to scrutinise lobbying. Our aim was to assess whether the registers are fulfilling this objective. Design and Methods. We conducted web searches of registers in Australian jurisdictions in 2014 and 2015 to determine what type of information they collected and whether data were accessible. We supplemented searches with e-mails and phone calls to registrars to clarify policies and seek additional information. Results. We found that the data were lacking in critical details and historical information was difficult or impossible to obtain. None of the registers required in-house lobbyists to register or to be bound by the Lobbying Codes of Conduct. None required that informal lobbying (e.g. by government relations staff within a company) be recorded, and none provided detailed information about the nature and extent of lobbying activities. Discussion and Conclusions. The registers do not meet the stated objective of making lobbying activity transparent to the Australian public. Timely access to comprehensive information is essential to help promote the rational development of policy concerning tobacco, alcohol and gambling problems. There is an urgent need to reform lobbyist registers to ensure that they are comprehensive and transparent. [Robertson N, Kypri K, Stafford J, Daube M, Avery M, Miller P. Australian lobbyist registers are not serving the purposes they were designed for. Drug Alcohol Rev 2017;00:000-000]

Key words: lobbying, politics, government, alcohol, tobacco.

Introduction

Concern about government susceptibility to the influence of vested interests has driven the regulation of lobbying activities in Australia and other countries [1–3]. The Australian federal government, and the governments of each state and the Australian Capital Territory have established lobbyist registers to address concerns about lack of transparency. We question whether these registers achieve their stated objectives of aligning lobbying activity with ‘public expectations of transparency, integrity and honesty’ [4].

Lobbying of ministers, other parliamentarians and officials is common, particularly where policy has implications for profit. Corporate political activity can be harmful if it promotes policies that conflict with the public good [1]. This is a particular concern in relation to lobbying by companies that sell tobacco, alcohol and gambling products [5–7], the use of which accounts for a substantial burden of disease and social problems in Australia. These and related industries have been shown to deliberately subvert science in order to achieve policy outcomes [8–11]. In addition to facilitating perverse policy outcomes, corporate political activity conducted behind closed doors erodes public confidence in democracy, encourages a cynical attitude towards government and reduces participation by civil society [2].

For the purposes of this commentary, a lobbyist is defined as any party or representative of a party (e.g. a...
professional fee-for-service lobbyist) seeking to influence
government policy for pecuniary benefit [4]. We have
not, in this paper, addressed lobbying that is not
undertaken for pecuniary benefit. Our aim was to assess
the degree to which the lobbyist registers in Australian
jurisdictions achieve what they were designed to achieve,
namely transparency in accounts of lobbyist interactions
with politicians and government officials.

Methods

We conducted research in three phases: (i) document
analysis to develop a chronology of the implementation
of lobbyist registers; (ii) web searches to examine lobbyist
register information in each jurisdiction in the period
December 2014 to April 2015; and (iii) phone calls or
e-mails to registrars; with follow-up e-mail requests in
April 2015 for all information about lobbyists registered
at any time during the preceding 10 years:

a) The lobbyist’s name and business registration
 particulars;
b) The name and role of all people employed,
contracted or otherwise engaged by the lobbyist to
carry out lobbying activities, and, if relevant, the
date the person ceased to be a senior government
representative;
c) The names of each lobbyist’s current clients; and
d) The names of clients for which the lobbyist had
carried out a lobbying activity within 12 months
before the lobbyist’s particulars were most recently
updated.

In September 2016, we made a final attempt to elicit
responses from registrars who had not responded.

Results

A lobbyist registration scheme was first introduced by the
federal government in 1983 but was ineffectual because
listings were confidential and compliance was poorly
monitored [12]. That scheme was abolished in 1996,
and it took over a decade for the first Australian jurisdic-
tion to legislate for a lobbyist register. By 2015, all but the
Northern Territory had passed similar laws. We were
unable to determine why the Northern Territory has
not adopted a register, despite several calls to relevant
authorities.

Each jurisdiction with a register has a code of conduct
with the object of increasing the transparency of lobbyist
activities. Lobbyists submit information as per individual
jurisdictional requirements, and some of that information
is available online. Each has rules regarding access to
historical data, much of which is offline. None of the
registers required in-house (i.e. informal) lobbyists (e.g.
government relations staff within a company) to register
or be bound by the Lobbying Codes of Conduct, and
only formal or third-party lobbyists were required to be
listed. None of the registers provided detailed informa-
tion about the nature and extent of lobbying activities.

Table 1 shows that the registers did not contain com-
prehensive, accessible, historical data [13], allowing only
a rough snapshot of lobbying activity (e.g. the company
name, owner, client name and whether currently active).
Records are maintained offline for varying lengths of
time. For example, according to the Western Australian
registrar, data are maintained offline for 4–5 years but
only indicate the number of people registered in that
period, and not their names or details of interactions with
politicians and government officials.

We received the data we requested in our initial request
only from Queensland. The Tasmanian registrar de-
clined to supply the information we requested, claiming
that it would take an unreasonable amount of staff time
(5 days) to retrieve it. The New South Wales registrar
indicated in May 2015 that data were being migrated
between departments. When we followed up in
September 2016, we were told that due to the volume
of work required to satisfy our request, we would have
to submit a freedom of information request which might
be declined if the resources required to fulfil it were
demed excessive. The Victorian registrar agreed, in a
phone conversation in December 2014, to send the
information but failed to do so, and did not respond to
our subsequent email request in April 2015. We followed
up in September 2016 and received the data in
November 2016. In May 2015, the South Australian
registrar stipulated we must sign a confidentiality agree-
ment before they would release historical data. Australian
Capital Territory staff confirmed that the only data
available were already online (back only as far as 2015
when the register was established). In September 2016,
the Australian Government registrar responded that our
request for data going back 10 years would require an
unreasonable diversion of resources and that we should
submit a freedom of information request with narrower
parameters.

Discussion and conclusion

The Australian lobbyist registers do not contain timely,
up-to-date and complete information concerning
interactions between lobbyists and politicians, political
staffers and senior bureaucrats. None provides sufficient
information on their websites to allow investigation of
historical lobbying activity, and few were responsive to
requests for such information. Accordingly, we conclude
| ACT | Australian Capital Territory; FOI, freedom of information; GIPA, Government Information Public Access; NSW, New South Wales; WA, Western Australia. |
that Australia’s lobbyist registers fall well short of meeting their stated objectives. Our findings are consistent with those of the Queensland Integrity Commissioner, who described existing registers as ‘…too narrowly focused on relatively few lobbyists… [they] ignore the lobbying of non-government legislators and…contain(s) no real mechanism for supervision or policing…’ [14].

Comparison with other similar countries, e.g. the USA and Canada, reflects poorly on the level of transparency in Australia [12]. For example, in Canada, lobbyists’ identities have to be declared, along with who they are lobbying and what they are lobbying for [15]. Canada imposes a 5-year (i.e. one year longer than a cycle of government) disqualification on lobbying by people who have held public office.

In Australia, persons employed after 1 July 2008 in the Offices of Ministers or Parliamentary Secretaries under the Members of Parliament (Staff) Act 1984 (adviser level or above), and agency heads, or persons employed under the Public Service Act 1999 in the Senior Executive Service (or equivalent), cannot, for 12 months after ceasing employment, engage in lobbying activities relating to any matter with which they had official dealings in their last 12 months of employment [4]. This restriction does not include the bulk of senators and non-cabinet Members of Parliament. So, while extending the disqualification on lobbying to at least a year past a cycle of government (i.e. for four years in the case of the Australian federal government) would assist in addressing the problematic ‘revolving door’ [16] of politicians becoming lobbyists, it would still fail to encompass many important political actors. We argue that the ministerial codes of conduct [17–23] regarding post-employment lobbying need strengthening and meaningful penalties should be enforced if the codes are breached. There are also international standards for the regulation of lobbying that could guide the development of more robust registers in Australia [24].

In his comparative overview of transparency through lobbyist legislation in Organisation for Economic Co-operation and Development countries, Bertok recommends that countries develop a strong legislative framework to monitor lobbyist activities, opening them to public scrutiny [2]. He argues that transparency would strengthen the democratic process and reduce the capacity for parties whose interests conflict with the public good to influence government [2].

Well-constructed and detailed registers contribute to public confidence in decision making and promote accountability. By failing to facilitate transparency, Australia’s lobbyist registers give credence to the view that registers are a pretence rather than instruments of probity.

These findings have important implications for tobacco, alcohol and gambling researchers and consumers of policy concerning harm from consumption of these products. Each jurisdiction should have a register that meets a minimum standard with the capacity to provide comprehensive, accessible information on lobbying for at least the previous five years [13]. We recommend the following reforms to existing registers:

1. Mandatory registration of any person, company or organisation that lobbies government for pecuniary benefit, including informal lobbyists and lobbying firms [4];
2. Timely registration and reporting;
3. Detailed registration and reporting, including the subject matter and target of lobbying [24];
4. That information be accessible on a public website with a comprehensive search function;
5. A cooling-off period of at least 4 years before former public officials (including politicians and political advisers) can seek employment as lobbyists or in commercial positions involving engagement with government;
6. A strengthening of the ministerial codes of conduct for post-employment activity; and
7. That breaches of the code should be investigated and assessed by an independent body with suitable powers, such as the Independent Commission against Corruption [25,26].

Acknowledgments

Funding: This research was funded by an Australian Research Council Linkage Project (Grant, number 130100046) and the Foundation for Alcohol Research and Education, and with an in-kind contribution from the Cancer Council Victoria. KK’s involvement in the research was supported by a National Health and Medical Research Council Fellowship (APP1041867).

Conflict of interest

Peter Miller receives funding from Australian Research Council and Australian National Health and Medical Research Council, grants from NSW Government, National Drug Law Enforcement Research Fund, Foundation for Alcohol Research and Education, Cancer Council Victoria, Queensland government and Australian Drug Foundation, travel and related costs from Australasian Drug Strategy Conference. He has acted as a paid expert witness on behalf of a licensed venue and a security firm.

References

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