

## 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

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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 jurisdiction 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 information about the nature and extent of lobbying activities.

Table 1 shows that the registers did not contain comprehensive, 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 declined 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 deemed 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 agreement 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

**Table 1.** Summary of lobbyist registers maintenance and availability

	WA	Commonwealth of Australia	South Australia	NSW	Tasmania	Victoria	Queensland	ACT
Register introduced	2007 [27]	2008 [28]	2009 [29]	2009 [30]	2009 [31]	2009 [32]	2010 [33]	2015 [34]
Records maintained	Yes (4–5 years)	Yes	Yes (unsure of record details prior to 2011)	Yes	Yes	Yes (4–5 years)	Yes (10 years)	Yes (only what is available online)
Retrospectively accessible	Limited	Possibly—submit a FOI request	Possibly—submit a request	Possibly—submit a request	Possibly—parameters required	Yes—parameters required	Possibly—submit a FOI request	Only what is online
Response from registrars	Could provide the number of people on the register but not the names or further details	The current parameters warranted an unreasonable diversion of resources. Suggested a narrowing of the request when submitting an FOI	Required that we sign a confidentiality agreement restricting disclosure of the names of lobbyists	Required that we submit a GIPA form. May be refused if considered an unreasonable diversion of resources	Declined to comply citing the workload involved in retrieving the requested data	As requested	As requested	Register only set up in 2015 so no data available aside from what was on the website

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 disclosure of information, 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].

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## Conflict of interest

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