

# **Inquiry into the operation of the *Lobbying Code of Conduct* and the Lobbyist Register**

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Thank you for the opportunity to make a submission to this important inquiry into Lobbyist and the best ways to regulate them.

This is a very murky and complex area. I believe that the broad term of reference for the inquiry indicates how much work needs to be done.

Over the past ten years I have been the director of the NSW Greens Political Donations Research Project.<sup>1</sup> During that time I came to realise that we were only dealing with one aspect of the impact of money on political outcomes. As the influential American interpreter of world affairs, William Pfaff, wrote in an article reprinted in The Japan Times in October 2011, political donations and lobbying are closely interrelated and have a very negative impact on the machinery of politics.<sup>2</sup>

Since this is such a complex and broad area, I will only be able to focus on a few of the major issues. I'm certain others will explore more of them in their submissions. I hope there will be in-depth discussions of this area in Parliamentary hearings. The issues of lobbyist and political donations are too important to ignore if we want a healthy and vibrant democracy in our country.

What I am doing is giving brief descriptions of three major scandals involving lobbyists in the US and Britain. From those incidents I will suggest ways we can move to avoid such unethical behaviour in Australia. I'm certain that the vast majority of lobbyists only engage in ethical behaviour, but unfortunately it appears a small minority of lobbyists are rogue operators, and some engage in criminal behaviour.

## **Problems re: Lobbyists in the United States of America**

Last year it was estimated that there were more than 13,000 registered federal lobbyists based in Washington, D.C. They spend huge amounts of money on their work. According to the Center for Responsive Politics, they spent up to \$3.5 billion in 2010. Their ability to lobby the government as individuals,

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<sup>1</sup> [www.democracy4sale.org](http://www.democracy4sale.org)

<sup>2</sup> William Pfaff, Why Americans' Indifference to Street Protests?, 6 October 2011

<http://www.williampfaff.com/modules/news/print.php?storyid=540&PHPSESSID=bdf48a4b9d542d1dea928033c830c18b>

groups or corporations is protected by the right-to-petition clause in the First Amendment of the United States Constitution.<sup>3, 4</sup>

Beginning in 2004 a scandal involving the lobbying activities of Jack Abramoff had nationwide then later worldwide implications.

Abramoff had developed important links to influential members of the Republican Party beginning in his undergraduate university days. He became deft at influencing legislation as a lobbyist. One of his strategies was to get some Indian tribes to make substantial campaign contributions to select members of Congress – here we see the direct relation between lobbying and political donations.

In addition, Abramoff spent large sums of money providing congressmen with free flights to the world's best golf destinations, such as St. Andrews in Scotland. He provided them with free meals at his upscale Washington restaurant Signatures, and the best tickets to all of the area's sporting events. He said he spent a million dollars a year on those tickets and for other venues.

According to Abramoff, the best way to get a congressional office to be responsive to his demands was to offer a staffer a job that could triple his salary saying, "You know, when you are done working on the Hill, we'd very much like you to consider coming to work for us."

At that moment, said Abramoff, "I owned them". They were going to do everything that he requested.<sup>5</sup> Abramoff estimates that he had very strong influence in 100 Republican offices in Congress.

Things began to fall apart for Abramoff in late 2004 when the US Senate Indian Affairs Committee began to investigate Abramoff's lobbying on behalf of American Indian tribes and casinos. He was convicted in 2006 of defrauding American Indian tribes and the corruption of public officials. In 2008, a Washington court found Abramoff guilty of trading expensive gifts, meals and sports trips in exchange for political favours, and he was sentenced to a four-year term in prison, to be served concurrently with his previous sentences. He was released from prison in June 2010.<sup>6</sup>

Abramoff took down a number of people with him, including the Republican Congressman from Ohio, Bob Ney, and nine other lobbyists and Congressional aides.

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<sup>3</sup> Cesar Chelala, How to ramrod an American congressman, The Japan Times, 28 November 2011  
://www.japantimes.co.jp/text/ea20111128cc.html

<sup>4</sup> Center of Responsive Politics <http://www.opensecrets.org/>

<sup>5</sup> Cesar Chelala, Op. Cit.

<sup>6</sup> [http://en.wikipedia.org/wiki/Jack\\_Abramoff](http://en.wikipedia.org/wiki/Jack_Abramoff)

Jack Abramoff has written an autobiography "Capitol Punishment: The Hard Truth about Washington Corruption from America's Most Notorious Lobbyist" in which he reveals his insider knowledge of corrupt federal political practices in the US.<sup>7</sup> In the last chapter he portrays himself as someone who supports genuine reform and gives recommendations for reform. I'll return to these recommendations later in this submission.

As an aside, "Capitol" in Abramoff's book title isn't a typo. It refers to the seat of his former power – the Capitol in Washington, home of the US Congress.

In order to see a fascinating brief overview of Abramoff's experiences and suggestions for reform, watch the American CBS TV 60 Minutes program of 6 November 2011.<sup>8</sup> Some people will say this could never happen in Australia. I disagree.

### **Problems re: Lobbyists in Britain**

Similar to Washington lobbying is big business in London - it is a two billion pound industry in the British capital. It is so large that prior to becoming Prime Minister David Cameron warned lobbying would be "the next big scandal" in Britain. And he has been proven correct – in fact two major scandals involving his government since October 2011.

Cameron promised to introduce reforms to the lobbying industry, but after 20 months in office nothing has happened.<sup>9</sup> Even the British Deputy Prime Minister, the Liberal Democrat Nick Clegg, has exempted himself from taking an active role in this policy area due to his wife's work in the lobbying sector.<sup>10</sup>

The first of these scandals involved the Conservative Defence Secretary Liam Fox.<sup>11</sup> Fox was being investigated for possibly breaking the ministerial code. He had been under pressure since it emerged that Mr Werritty, a lobbyist, had met him on 18 foreign trips despite having no official role.

Werritty, a former flatmate of Fox and the best man at his wedding, handed out business cards suggesting he was his adviser and was present at meetings Fox had with military figures, diplomats and defence contractors.

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<sup>7</sup> Capitol Punishment: The Hard Truth about Washington Corruption from America's Most Notorious Lobbyist, WND Books, 2011

<sup>8</sup> <http://www.cbsnews.com/video/watch/?id=7387331n>

<sup>9</sup> Leading article: Evidence of a lobbying industry out of control. The Independent, 5 December 2011  
<http://www.independent.co.uk/opinion/leading-articles/leading-article-evidence-of-a-lobbying-industry-out-of-control-6272767.html>

<sup>10</sup> Government misses latest deadline for lobbying reform plans.  
<http://unlockdemocracy.org.uk/media/news/entry/government-misses-latest-deadline-for-lobbying-reform-plans>

<sup>11</sup> Defence Secretary Liam Fox quits. BBC News, 14 October 2011.

Questions were also raised about who paid for Mr Werritty's business activities and whether he had personally benefited from his frequent access to the defence secretary.

Fox allowed Werritty to attend certain meetings, including one with a defence contractor, without civil servants being present. Fox had facilitated an introduction between his friend and a donor, and donations given to Werritty could be seen to give rise to the perception of a conflict of interest.

Fox resigned as Defence Secretary in mid October 2011.

However, Liam Fox's departure left a cloud of unanswered questions over the precise role of his friend, Adam Werritty, in the Ministry of Defence. Had Werritty just been a freeloader on the former minister's multifarious overseas trips it would only be a matter of a friendship that went too far. But as the growing calls for a fraud investigation into Werritty's business activities indicate, much more appears to be at stake.

These activities involved members of a number of groups such as the now defunct group, Atlantic Bridge – all lobby groups for various countries or foreign political interests – obtaining privileged access to a senior minister. Labour has pointed out the connections between the now defunct Atlantic Bridge and to climate change sceptics and Tea Party supporters in the US Republican party. More worrying for many people is the possibility that Israel's right-wing government enjoyed a kind of hotline to Fox via Werritty's friends in Atlantic Bridge and Bicom.<sup>12</sup>

The second major scandal broke while I was in London in December 2011. For a number of days The Independent carried stories of the Bell Pottinger lobbying firm's shady dealings.<sup>13</sup>

Bell Pottinger Group is a multinational public relations and marketing company based in London and a totally owned subsidiary of Chime Communications. The company offers services such as lobbying, speech writing, search engine optimisation and sorting Wikipedia articles to clients including companies, governments and wealthy individuals.<sup>14</sup>

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<sup>12</sup> Leading article: A lobbying culture that needs to be challenged. The Independent, 17 October 2011 <http://www.independent.co.uk/opinion/leading-articles/leading-article-a-lobbying-culture-that-needs-to-be-challenged-2371602.html>

<sup>13</sup> Revelations: How lobbyists' tentacles spread throughout the Government. The Independent, 7 December 2011. <http://www.independent.co.uk/news/uk/politics/revelations-how-lobbyists-tentacles-spread-throughout-the-government-6273280.html>

<sup>14</sup> Bell Pottinger Group, Wikipedia [http://en.wikipedia.org/wiki/Bell\\_Pottinger\\_Group](http://en.wikipedia.org/wiki/Bell_Pottinger_Group)

Lord Bell, who advised Margaret Thatcher on media matters when she was Prime Minister, is a co-founder of Bell Pottinger and chairman of Chime Communications.

The Bureau of Investigative Journalism<sup>15</sup>, which is based at the City University in London, began an undercover investigation in 2011 of Bell Pottinger Group's work for the country of Uzbekistan.<sup>16</sup>

The Bureau believes Britain is gaining a name as the place to go for reputation management since there is a lack of regulation of lobbying firms and no requirements for transparency of their work. The means these companies can represent the most repressive regimes under a cloak of secrecy.<sup>17</sup>

Uzbekistan was included in the 2011 list of "Worst of the Worst" repressive regimes published by the US think-tank Freedom House. A number of years earlier, the regime had gained a negative reputation after allegedly boiling a religious prisoner to death, using child labour in the cotton industry and is often accused of torturing people to obtain confessions.

Reporters from the Bureau posed as agents for the government of Uzbekistan and representatives of its cotton industry in a bid to discover what promises British lobbying and public relations firms were prepared to make when pitching to clients; what techniques they use; and how much of their work is open to public scrutiny.

These reporters secretly recorded senior executives of Bell Pottinger and found them boasting about the company's access to the heart of the British Government and how it uses 'dark arts' to bury bad coverage and influence public opinion.<sup>18</sup>

This is a summary of their findings that were also published in The Independent:

- 1) Claiming they have used their access to Downing Street to persuade David Cameron to speak to the Chinese premier on behalf of one of their business clients, within 24 hours of asking him to do so.
- 2) Boasting about Bell Pottinger's access to the Foreign Secretary William Hague, to Mr Cameron's chief of staff Ed Llewellyn and to Mr Cameron's old friend and closest No 10 adviser Steve Hilton.

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<sup>15</sup> <http://www.thebureauinvestigates.com/>

<sup>16</sup> Lobbying's hidden influence. <http://www.thebureauinvestigates.com/category/projects/lobbying-projects/>

<sup>17</sup> How the Bureau investigated Bell Pottinger. <http://www.thebureauinvestigates.com/2011/12/05/how-the-bureau-investigated-bell-pottinger/>

<sup>18</sup> PR uncovered: Top boast of how they influence the PM.

<http://www.thebureauinvestigates.com/2011/12/05/pr-uncovered-top-lobbyists-boast-of-how-they-influence-the-pm/>

- 3) Suggesting the company could manipulate Google results to ‘drown out’ negative coverage of human rights violations and child labour.
- 4) Revealing that Bell Pottinger has a team which ‘sorts’ negative Wikipedia coverage of clients.
- 5) Saying it was possible to use MPs known to be critical of investigative programmes to attack their reporting for minor errors.

During this investigation the reporters discovered other work the company had successfully done for the engineering firm Dyson, such as getting David Cameron to complain about copyright infringement to the Chinese premier Wen Jiabao during a state visit in June 2011.<sup>19</sup>

One point I found especially interesting in the work of the Bureau is advice they discovered given by Bell Pottinger to their clients about political donations.

Tim Collins, who is managing director of Bell Pottinger Public Affairs, said he tells clients not to give a political donation to the Conservatives because it could be counter-productive. “It’s becoming in some cases more difficult for a company that has given money to the party in power to get in certain meetings and get what they want than it is for a party that hasn’t because the media is hugely focused on scruples so I wouldn’t recommend that.”<sup>20</sup>

## **Reform in Other Countries and Recommendations**

The scandal in the USA caused by the activities of Jack Abramoff led to some regulation of lobbyists in that country. However, Abramoff believes the American reforms are ineffectual as do some senators and good-government groups.<sup>21</sup> As Abramoff stated, “These faux-reform efforts ... tweak the system. They’ll say, You can have a meal with a congressman if they are standing up, not sitting down. The system has not been cleaned up at all. The people who are actually in the system are the people who are making reforms.”<sup>22</sup>

In the UK there is only self regulation of lobbyists. Most observers do not think this is adequate at all, and they call for government action. However as we earlier saw, the government talks about reform but doesn’t move on it although two thirds of MPs want lobbyists registered.<sup>23</sup>

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<sup>19</sup> Caught on camera: top lobbyists boasting how they influence the PM. The Independent, 6 December 2011 <http://www.independent.co.uk/news/uk/politics/caught-on-camera-top-lobbyists-boasting-how-they-influence-the-pm-6272760.html>

<sup>20</sup> Revelations: How lobbyists’ tentacles spread throughout the Government. Op. cit.

<sup>21</sup> Capitol Punishment, 2011. Op. cit.

<sup>22</sup> Cesar Chelala Op. cit.

<sup>23</sup> Parliamentary inquiry into lobbying to call Bell Pottinger executives as witnesses. The Independent, 9 December 2011. <http://www.independent.co.uk/news/uk/politics/parliamentary-inquiry-into-lobbying-to-call-bell-pottinger-executives-as-witnesses-6274539.html>

There has been regulation of lobbyist in Australia since Western Australia brought in reforms in 2007 after the Brian Burke scandal in that state. The federal government and a number of other states have followed the lead given by WA.<sup>24</sup>

There have been a number of critiques of the situation in Australia, with many observers arguing that the system devised in WA and followed in other jurisdictions has been weak.<sup>25</sup>

Since I'm certain others will cover the Australian experience in considerable depth and the Democracy4Sale web site soon will have Australian lobbyists articles posted on the home page of Lobbyist, I will move directly to my recommendations.

Since Abramoff probably has more experience with the world of lobbyist than anyone on the current inquiry and those of us making submissions, what does he recommend we do to clean up the system?

He says the most important measure to be taken is to prohibit members of Congress and their staff from becoming lobbyists in Washington (he appears to go as far as saying they never should be allowed to become lobbyists after retiring from government positions). According to the online disclosure site LegiStorm, 5,400 former congressional staffers and almost 400 former lawmakers have become lobbyists over the past decade.<sup>26</sup>

Former US congressman Lee Hamilton, director of the Center on Congress at Indiana University, wrote: "I'd even go further. I favor the radical steps of prohibiting members of Congress from accepting contributions from firms that lobby them, and banning lobbyists from contributing to members they lobby."

In addition, Hamilton believes that Congress needs an institution, similar to the Congressional Budget Office, to give it "unbiased and unvarnished analysis of pending issues each week."<sup>27</sup>

## **Recommendation One**

All members of parliament should be banned from lobbying activities for two years after they retire from parliament.

## **Recommendation Two**

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<sup>24</sup> Chari, R, Hogan, J & Murphy, G, Regulating lobbying: a global comparison. Manchester University Press, 2010

<sup>25</sup> Justin Di Lollo, Regulating only one class of lobbyist gives the green light to others. Sydney Morning Herald, 12 July 2011.

<sup>26</sup> Legistorm <http://www.legistorm.com/blog/original-lobby-filings-available-to-legistorm-pro-subscribers.html>

<sup>27</sup> Cesar Chelala Op. cit.

All advisers of all parliamentarians should be banned from lobbying activities for two years after they resign their parliamentary position.

### **Recommendation Three**

All members of parliament be prohibited from accepting contributions from firms that lobby them, and all lobbyists be banned from contributing to members they lobby.

There is at least one case of a sitting councillor at the local government level working as a lobbyist. This is Sydney City Councillor Shayne Mallard who works for Statecraft Pty Ltd.<sup>28</sup> A number of Statecraft's recent and current clients are involved in the property and energy industries – some that have extensive dealings with the City of Sydney Council. This creates the perception of a possible conflict of interest for Cr Mallard.

Earlier we saw that the wife of the leader of the Liberal Democrats and Deputy Prime Minister of the UK is a lobbyist.

This inquiry is only concerned with the situation at the federal level of our government, and not local government councillors and certainly not close relatives of UK leaders. However, I firmly believe that we can send a message to other levels of Australia government and the world at large. We must remember that Australia has been the leader in the world in many areas of progressive reform over the past century or longer.

Therefore, I further propose the following two recommendations:

### **Recommendation Four**

No sitting member of parliament can be employed both as a lobbyist and a member of parliament.

### **Recommendation Five**

No family member (spouse, children, life partner or grandparents) of a serving member of parliament can be employed as a lobbyist.

### **Recommendation Six**

The definition of lobbyist should be expanded to include in-house lobbyists and members of legal firms, accountancy firms, and other professional services firms who regularly promote the interests of their clients directly to the

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<sup>28</sup> Statecraft public affairs senior team. <http://www.statecraft.com.au/index.php?q=public-affairs-senior-team>

federal government.

### **Recommendation Seven**

An independent agency with investigative powers should be set up to monitor the lobbyist register, any breaches of the Lobbyist Code of Conduct and any matters referred to this body.

Due to the holiday period and the short time allowed for making submissions to this inquiry, I have not had adequate time to thoroughly investigate the current Australian Government Lobbying Code of Conduct and similar codes in the USA. Therefore, if I am called to appear before the committee at a future date, I request that I be allowed to comment on the current Australian Code.

Sincerely,  
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Director,  
NSW Greens Democracy4Sale Research Project  
[www.democracy4sale.org](http://www.democracy4sale.org)