

Lobbying the Senate: Two Perspectives

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The main interaction lobbyists have with the Senate is via the committee process and in this paper I will briefly outline the constructive role played by the Senate Standing Committee responsible for education in framing the legislation and regulatory framework for international education.

Australia discovered the benefits of exporting education in the 1980s. Minister John Dawkins facilitated the stream of foreign students into Australia by not just deregulating the infant industry, rather leaving it unregulated. So much so that after the market was closed following the Tiananmen Square massacre in 1989, the Australian taxpayer was left with a \$100 million bill to pay, with a sorry trail of collapsed colleges, students out of pocket and Australia's reputation in tatters.

Naturally enough, the response was to put in place a regime that would ensure the *situation* could not happen again. The government's initial response was such that *nothing* would ever happen again. A valuable and lucrative industry would have been uncompetitive.

Over several years in the early to mid-1990s, the appropriate Senate committee—it had different names over the period—referred the legislative package back and forth, and it performed a de facto executive function. The key element was continuity. The Department of Employment, Education and Training had no corporate memory. Each year the public servants were different.

By contrast, the committee had a continuing and largely bipartisan composition. The late Senator Olive Zakharov of the Australian Labor Party was Chair, Senator John Tierney was the most consistently active Coalition Senator and former Senator Robert Bell was the Democrat, ably assisted by a then staffer, Natasha Stott Despoja. Another

constant was the committee secretary, Brenton Holmes—one of the long-standing committee secretaries who are pillars of the whole system.

More recently, the industry survived the potentially equally disastrous Asian currency crisis virtually unscathed, although current reports reveal that new immigration scams involving foreign students have emerged. Interestingly, the same Senate committee warned the government in 1998 to look at this area as part of a ‘sunset clause’ reference on the same legislation. Unfortunately, the government did not act on the committee and industry warnings.

Clearly a Senate committee performing such a role is only possible thanks to proportional representation. Maybe I am too cynical, but I cannot imagine an independent committee system emerging in a Senate dominated by one or the other of the two major parties.

This leads me to comment on the developing trend of partisanship, which is undermining confidence in the Senate committee system. The first committee I ever attended was Public Accounts in the late 1960s when the redoubtable Senator Dame Ivy Wedgwood was in the chair. Under Dame Ivy’s control, witnesses—even public servants—were protected from overzealous and partisan questioning.

Even considerably later as a lobbyist I could encourage reluctant clients to appear before committees secure in the knowledge that they could enjoy the protection of the Chair. No longer. The Goods-and-Services Tax (GST) committees are only the most recent and most blatant example of outsiders being savaged. Several people who fronted the GST committees thinking they were doing the right thing—not professional lobbyists—will never participate in the process again.

What is the solution? There is no return to a golden age, but the status of committee chairs could be promoted in terms of staff and extra allowances so that they were not simply stepping stones to ministerial office, but an alternative career path for able politicians. This might lead to acceptance of a bipartisan role. Second, there could be a review of the committee structure to differentiate more between the legislation committees, which will obviously be partisan, and the others. Third, a code of conduct for senators participating in committees would remind them of the required standards and prevent the bad impression they so frequently make.

Francis Sullivan

When considering lobbying the Senate, it is instructive to reflect on what perception ordinary people have of the upper chamber and senators in particular. I believe the community's opinion of its elected representatives has deteriorated. While I have a great regard for the parliamentary process, for public service and for elected office, my opinion is not typical of current community sentiment. These days, rather than holding senators in high esteem, ordinary Australians perceive the Senate to be full of 'just another bunch of politicians'. There is little community appreciation for the different roles and responsibilities of senators, and there is no general cognisance of the legislative watchdog function performed in the Senate. Distinctions between members of the House of Representatives and the Senate have become blurred through the nature of media presentation. All parliamentarians are being unfairly clumped together and treated with the same degree of community cynicism, mistrust and disappointment. Opinion polls are consistently registering this erosion in public confidence and trust of elected representatives.

This community scepticism manifests itself in widespread disengagement with the political process and an undermining of the value of elected representatives. This complicates the lobbying process. It means lobbyists must connect community concerns with the Senate and negotiate solutions in an atmosphere in which the outcomes of the political process are often regarded dubiously by the community. This is a major challenge for parliamentarians and all involved in the political process. It is a challenge that falls equally to the media and those presenting the value of parliamentary democracy. In effect, it requires us to explain the reality of the Senate's workings and the capacity for the community to effect change, influence decision making and promote public policy. An old axiom says that the practice of politics is akin to human nature standing before a mirror. In other words, the good and bad of human nature is exposed in political activity. Successful lobbying involves an appreciation of the foibles of human nature, the frailty of egos and the lure of power and importance.

The motivations of senators are mixed. Some senators appear as if they would prefer to be in the House of Representatives, presumably to have a better chance of becoming a minister. Others are simply glad to have a seat, enjoying the spoils of party loyalty. There are those who want to change the world and are in the Senate to be the community's moral watchdog. Overall, however, senators are just like everyone else: they have varying passions, capabilities and intentions. The manner in which they approach their responsibilities greatly affects the community's general attitude towards politics. It is important that elected members speak from a consistent values base rather than from political expediency if the community's trust is to return to the political process.

An example of the type of honesty required was displayed recently by Independent Senator Brian Harradine in his emotional speech against the introduction of the goods-and-services tax. He stopped the nation with his speech, which was based on consistent and predictable values, and tapped into a widely held sentiment in the community. Harradine's speech captured the romance of the Senate. I cannot recall

another speech like it in the last six years, yet people yearn for such speeches to be made in the Senate. They also yearn, through their community lobby groups, to be able to connect with elected people who speak from a predictable and consistent values base. Besides instilling integrity and authenticity into the Senate process, this enables community groups to connect with more than an obscure, hidden, often-times unreachable process conducted in back rooms. Too often the cynical view has many believing that the political process has been reduced to party manoeuvring determined more by opinion polls than by stated policy positions.

The operation of the Senate is complex. These days, when lobbyists observe the Senate, as compared to the House of Representatives, they see the evolution of representative 'cells' rather than the direct representation of the states and territories. The traditional understanding of the Senate preserving states' rights and being a house of review is shifting. Now, with minor parties and independents, mini constituencies are in effect controlling the agenda of the Senate's deliberations and even determinations.

This change in the functioning of the Senate has implications for lobbying. The Australian Catholic Health Care Association's experience in lobbying the Senate reveals the transitory nature of dealing with various political parties in the Senate. We have found that relationships change depending on the relative power or influence parties have in the overall calculus of the Senate's balance of power. That is, parties appear to have a different disposition towards community groups at different times in the electoral cycle. Also, this disposition shifts in accordance with the party's importance in terms of the balance of power.

Some Senate groups give lobbyists immediate access; others prefer to make lobbyists wait. The difference appears to depend on where the party considers itself to be within the overall scheme of things. That is, whether the lobbyists need the party more than the party needs the lobbyists. In a 'balance of power' scenario, those parties that are effectively the official Opposition in the Senate have the luxury of setting the agenda and determining time-lines in regard to addressing the concerns of different lobby groups.

These are important dynamics that frustrate those outside the political process, who do not understand the intricacies. Members of our association, for example, will contact me and say, 'You've got to tell the Senate X, Y and Z'. When I say that we have done just that through the proper processes or even in informal conversations with significant senators, many members do not understand why the situation has not then changed. Effective lobbying is more akin to an integrated continuum of activity, information sharing and problem solving than to the glamorised notion of heavy-handed quick fixes imposed by powerful interest groups.

So, is the Senate the main game for lobby groups? The answer, obviously, is no. The main game is always the government of the day. Any competent lobby group spends a lot of time with the non-elected influences in the process, such as bureaucrats and ministerial staffers. Today it is the people who have influence in the prime minister's office or in the relevant ministerial offices who are of particular importance. This approach is common sense as the majority of real decisions and funding outcomes are determined in these settings, not in the parliament.

On the other hand, lobbying the Senate can be beneficial. One example of this for our association was the Howard government's aged care reforms. The government had announced its reforms, involving the introduction of fees in nursing homes, in the 1996 Budget, although they were not to take effect until towards the end of 1997. In the first instance, a broad piece of legislation needed to pass through the parliament. The government's majority in the House of Representatives meant amendments to the legislation were only ever a possibility in the Senate. Consequently, to be effective, our lobby needed to isolate the most crucial Senate influences.

At that time, the Australian Labor Party had expressed outright opposition to the government's policy, which effectively removed the party from any negotiated compromises. Lobby groups therefore needed to deal with those who could broker change. Lobbying focused on talking to, and building relationships with, those who were prepared to modify or amend legislation rather than reject it. As the Australian Democrats, the Greens and the independents held the balance of power, this meant dealing with these minor parties and independents to press our case for amendments. We spent a lot of our energy targeting these senators while simultaneously pressuring the government for change.

Other credible groups shared our concerns, and a coalition of church groups formed an effective lobbying voice. One of the most important and early policy matters to be resolved was the level of subsidy to be paid to nursing homes for admitting financially disadvantaged people. Previous government research had indicated this subsidy needed to be at least \$12 per person per day. This was our preferred level, but the government chose a level of \$5 a day and held firm. As predicted, the legislation passed the lower house intact. Initially, it seemed that the Senate parties were generally in favour of the legislation. However, the Democrats in particular began to have concerns raised through part of their constituency base, that is, the major social service agencies of the churches. During a fairly consistent lobbying effort, the Democrats realised that the funding attached to the legislation had to be improved. Consequently, the Democrats brokered a negotiated deal between the association, other church groups and the government. The result was a shift in subsidy from \$5 to \$12 in exchange for passage of the legislation.

This was an example of the Senate acting as a broker. The credibility of the brokerage came from the community groups, which was important. The change was the result of the intellectual value-added input of the community, not specifically the Senate. In the case outlined, the Democrats happily brokered what was already a credible community-based position. It was an effective process and a pragmatic demonstration of the workings of the Senate.

The issue spilled on from there and became quite high profile in the media. Other legislation was needed in the Senate, which created the opportunity for another Senate inquiry. Senate inquiries are increasingly becoming fairly nasty affairs, partly due to a lack of clear ground rules. People who come to the inquiries, including ordinary citizens, can be subject to rather rude questioning and, at times, criticisms that should be levelled at elected members of parties rather than at individuals in the community. During one Senate Community Affairs Committee hearing, some of the government senators were clearly being briefed by ministerial officers to ask questions

challenging the bona fides of the major church lobbies. They sought to embarrass witnesses by raising irrelevant yet inflammatory questions, but since I'm Irish and Catholic, it is not my wont to meekly sit and smile. Evidently the exchange made good theatre. I later heard a portion of the exchange replayed on the ABC's *The World Today* and on that evening's ABC television news. This only added to the community's perception that the government's policy was wrong and that politicians had resorted to personal attacks to divert attention from the issues.

More importantly, this raises the issue of the value of these inquiries. Apart from providing an opportunity for some senators to grand-stand and attack ordinary citizens, the committees appear to inevitably divide on party lines when final considerations are determined. It is almost as if the major and minor committee reports could be written without taking public evidence. If the aim of the committees is genuinely to review legislation and the policy settings behind it, then political posturing in the committees becomes counter-productive. This trend undermines the effectiveness of the committees.

The committee system is beneficial to longer-term policy development. Policy suggestions can be raised and at least superficially examined. However, it appears that the committee process is at risk of being hijacked by a more pressing political agenda. This only furthers the degree of cynicism that prevails in the community about the value of the parliamentary system. The public trust that legitimate parliamentary processes will independently analyse, assess and discern the best policy in the interests of the common good is tenuous at best.

Another case in point relates to the parliamentary process surrounding the GST legislation. Many groups with good intentions got involved in the Senate tax inquiries. They put huge resources into submissions and organised themselves to appear at hearings in Canberra or elsewhere, all at their own expense. But, at the end of the day, many would say the effort was not worth it. While some very heartfelt scenes at the hearings were reported, ultimately there were no major changes to the tax package that were not predicted beforehand. Most social service groups highlighted issues about food and pension rates when the tax package was first released. It serves little purpose to the community if the majority reports do not have much impact on the overall outcome. It can be argued that committee scrutiny highlighted concerns in the community, and added to the workings of democratic deliberations because the committees afforded the community another opportunity to raise issues and possible solutions. Some senators may even have gained extra information. But for members of the major parties, internal party discipline rendered any 'vote-changing information' relatively impotent. The 'big ticket' issues were well canvassed in public debate before the hearings. Any compromise measures likewise were floated early in the process. Surely responsible senators, on an issue as crucial as fundamental tax reform, would not largely rely on the committee process to inform their thinking, let alone their vote. The tendency for the major parties to manipulate the committee process and politicise the hearings dominates the usefulness of the outcomes.

The Australian Democrats and the independents were able to use public submissions to advance their cases with the government. However, the ultimate result was always going to be determined by a negotiation over the publicly high-profile issues in the tax reform proposals and the well-flagged solutions. This would have been so whether or

not the protracted committee process occurred. The challenge for everyone, including people like myself who are involved in making representations in the Senate system, is to at least ensure that transparency is a value that is promoted. Also, to some degree people need to be free to speak frankly and openly. This places senators squarely back in the role of legislators and not merely party representatives defending a pre-determined policy position. This would result in credibility returning to the committee system and the Senate as a whole.