



**Australian Government**

**GOVERNMENT RESPONSE TO  
SENATE STANDING COMMITTEE ON  
FINANCE AND PUBLIC ADMINISTRATION  
REPORT**

**KNOCK, KNOCK... WHO'S THERE?  
THE LOBBYING CODE OF CONDUCT**

**January 2009**

## **INTRODUCTION**

The Australian Government welcomes the report of the Senate Standing Committee on Finance and Public Administration into the Lobbying Code of Conduct 'Knock, knock... who's there? The Lobbying Code of Conduct'.

The Lobbying Code of Conduct (the Code) was adopted by the Government in May 2008 to promote trust in the integrity of government processes and ensure that contacts between lobbyists and Australian Government representatives are conducted in accordance with public expectations of transparency, integrity and honesty.

In adopting the Code, the Government recognised that lobbying is a legitimate activity and part of the democratic process. However, there was a concern that Government representatives who are the target of lobbying activities are not always fully informed as to the identity of the people who have engaged a lobbyist to speak on their behalf. The Government considered that this information can be fundamental to the integrity of its decisions and should be freely available to those who are lobbied and to the wider public.

## **RESPONSE TO RECOMMENDATION**

The Committee made one recommendation.

### **Recommendation 1**

*That the Senate Standing Committee on Finance and Public Administration conduct an inquiry into the operation of the Lobbying Code of Conduct in the second half of 2009.*

### **Response**

The Government notes the Committee's recommendation.

The Government will keep the operation of the Register of Lobbyists under review and, if necessary, will consider the need for any changes to the Code and the way the Register operates.

## **COALITION SENATORS' MINORITY REPORT**

The Deputy Chair of the Committee, Senator Mitch Fifield, with Senator Concetta Fierravanti-Wells and Senator Scott Ryan, lodged a minority report with six recommendations.

### **Recommendation 1**

*That the Cabinet Secretary's powers to exclude a lobbyist from the register be devolved to the Secretary of the Department of the Prime Minister and Cabinet.*

### **Response**

The Government does not support Recommendation 1 of the Minority Report.

The Government considers it is entirely appropriate that the Minister responsible for the Code, the Cabinet Secretary, have absolute discretion under the Code to direct the Secretary of the Department of the Prime Minister and Cabinet not to register a lobbyist or individual, or to remove a lobbyist or individual from the Register.

The Government expects that this power would be exercised rarely and only after affording natural justice to the individual or individuals concerned as is required under clause 10.5 of the Code. The Government notes that, to date, no lobbyist has been refused registration or removed from the Register at the direction of the Cabinet Secretary.

### **Recommendation 2**

*That a decision to exclude an individual or entity from the register be subject to appeal to the Administrative Appeals Tribunal, to ensure that legal resource is not cost prohibitive.*

### **Response**

The Government does not support Recommendation 2 of the Minority Report.

The Lobbying Code of Conduct has been established by Executive decision and any decisions made under the Code are not subject to appeal to the Administrative Appeals Tribunal (AAT).

The Government notes that the AAT does not have any power to review decisions of Ministers or officials unless they are made under an Act, Regulation or other legislative instrument that provides specifically that the decision is subject to review by the AAT.

The Code provides for natural justice to be afforded to effected lobbyists and there are avenues of legal appeal if necessary.

**Recommendation 3**

*That coverage of the Code be expanded to embrace unions, industry associations and other businesses conducting their own lobbying activities.*

**Response**

The Government does not support Recommendation 3 of the Minority Report.

The purpose of the Register of Lobbyists is to allow Ministers and officials to establish whose interests a lobbyist represents when they seek to influence Government officials. Ministers and public servants cannot determine whose interests a third party lobbyist is promoting unless the lobbyist discloses that information to them.

Concerns about transparency do not arise in relation to in-house lobbyists and employees of peak industry bodies, trade unions and religious organisations, as it is clear whose interests they represent when they lobby Government representatives.

**Recommendation 4**

*That post-employment restrictions on MOPS staff be removed from the Code.*

**Response**

The Government does not support Recommendation 4 of the Minority Report. Clause 7 of the Code provides that persons who were, after 1 July 2008, employed in the Offices of Ministers or Parliamentary Secretaries under the *Members of Parliament (Staff) Act 1984* (the MOP(S) Act) at Adviser level and above, as well as senior public servants and senior members of the Australian Defence Force, are prohibited, for a period of 12 months after they cease their employment, from engaging in lobbying activities, as a third-party lobbyist, relating to any matter that they had official dealings with in their last 12 months of employment. This is consistent with the policy underpinning the Code: that Ministers and other Government representatives have a right to know who stands to benefit from lobbying activities.

The Code therefore does not restrict former senior ministerial staff members from lobbying on behalf of companies that employ them after they cease their employment. However, it does impose a temporary restriction on their ability to work as third-party lobbyists on behalf of clients who operate in an area in relation to which they had official dealings in their last 12 months as a member of staff.

Former Ministers (and Parliamentary Secretaries) are subject to greater restrictions under the Standards of Ministerial Ethics. Ministers and Parliamentary Secretaries are required to undertake that, for a period of 18 months after ceasing to be a Minister, they will not lobby, advocate or have business meetings with members of the Government, public service or Defence Force on any matter that they had official dealings as a Minister in their last 18 months in office. This restricts a former Minister or Parliamentary Secretary from lobbying Government representatives during the specified period, even in an in-house capacity.

**Recommendation 5**

*That the status of the Code Q&A section on the PM&C website be clarified to establish whether it forms part of the Code itself.*

**Response**

The Government supports Recommendation 5 of the Minority Report.

The operation of the Register of Lobbyists is underpinned by the Lobbying Code of Conduct. The Questions and Answers (Q&As) on the Register of Lobbyists website (<http://lobbyists.pmc.gov.au/lobbyistsregister/>) do not form part of the Code. They have been designed to provide further information about the application of the Code.

However, to avoid any ambiguity or potential misunderstanding a preamble has been added to the Q&As page on the Lobbyists Register website confirming that the Q&As do not form part of the Code, but have been designed to provide guidance on the Code and the operation of the Register.

**Recommendation 6**

*That the Code should not be expanded to apply to non-executive members of either House of Parliament nor to non-ministerial MOPS staff.*

**Response**

The Government notes Recommendation 6 of the Minority Report.

The Executive cannot regulate the activities of Members of Parliament and any attempt to do so might amount to an improper interference with the free performance by a Member of his or her duties as a Member, contrary to section 4 of the *Parliamentary Privileges Act 1987*.

The Government notes that individual senators and members and non-ministerial staff can adopt the Code to limit their contacts with third-party lobbyists to those on the Register if they wish.