

The Senate

Finance and Public Administration
References Committee

The operation of the Lobbying Code of
Conduct and the Lobbyist Register

March 2012

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43rd Parliament

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Chapter 1

Introduction

Terms of reference

1.1 On 24 November 2011, the Senate referred the following inquiry to the Finance and Public Administration References Committee for report by 1 March 2012:

The operation of the Lobbying Code of Conduct and the Lobbyist Register.

Conduct of the inquiry

1.2 The inquiry was advertised in *The Australian* and through the internet. The committee invited submissions from interested organisations and individuals and the Department of the Prime Minister and Cabinet (the department). At the request of the committee, the department also provided an invitation to make a submission to all entities listed on the Register of Lobbyist.

1.3 The committee received 17 public submissions. A list of individuals and organisations which made public submissions to the inquiry, together with other information authorised for publication by the committee, is at appendix 1. The committee held one public hearing in Canberra on 21 February 2012. A list of the witnesses who gave evidence at the public hearing is available at appendix 2.

1.3 Submissions, additional information and the Hansard transcript of evidence may be accessed through the committee's website at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=fapa_ctte/index.htm

1.4 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearings.

Note on references

1.5 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard; page numbers may vary between the proof and the official Hansard transcript.

Background to the inquiry

1.6 The Lobbying Code of Conduct (the Code) was tabled in the Senate on 13 May 2008 by the then Special Minister of State and Cabinet Secretary, Senator the Hon John Faulkner. In addition, the Minister announced the establishment of the

Register of Lobbyists (the Register). The Code is provided in appendix 3 of this report.

1.7 The Code is intended to:

...promote trust in the integrity of government processes and ensure that contact between lobbyists and Government representatives is conducted in accordance with public expectations of transparency, integrity and honesty. Lobbyists and Government representatives are expected to comply with the requirements of the Lobbying Code of Conduct in accordance with their spirit, intention and purpose.¹

1.8 Provisions of the Code include:

- prohibition of contact between government representatives and unregistered lobbyists;
- prohibition on those who retire from office as a minister or parliamentary secretary, for an 18 month period after they cease to hold office, to engage in lobbying activities relating to any matter that they had official dealings with in their last 18 months in office;
- a 12-month cooling off period for ministerial staff, senior public servants or defence personnel who have resigned or retired, who may want to work as lobbyists;
- principles of engagement with government representatives;
- definitions of 'lobbyist' and 'lobbying activities'; and
- sanctions for certain actions.

1.9 A significant feature of the Code is that it applies only to 'third party lobbyists'. That is, it applies to lobbyists who lobby one party on behalf of another person or organisation. It does not apply to those employed to undertake lobbying activities on behalf of their employer. The application of the Code is limited to members of the executive and their staff.

1.10 The Code established a publicly available Register of Lobbyists. Information provided on the Register includes:

- business registration details, including trading names, of the lobbyist;
- the names and positions of persons employed, contracted or otherwise engaged by the lobbyist to carry out the lobbying activities; and
- the names of clients on whose behalf the lobbyist conducts lobbying activities, subject to not disclosing certain information under Chapter 6CA of the *Corporations Act 2001*.

1 Australian Government, *Lobbying Code of Conduct*, June 2011, section 1.4.

1.11 The Minister, in tabling the Code, commented:

The revised Code represents an appropriate balance, I believe, between the right of ministers, officials and the public to know who stands to benefit from the efforts of lobbyists, and the ability of business to be able to make views known to government. It will not impose unreasonable demands on the lobbying industry, business or ministers and officials.²

Inquiry by the Senate Standing Committee on Finance and Public Administration

1.12 Following its tabling, the Senate referred the Code to the Standing Committee on Finance and Public Administration so that it could inquire and report on the Code's adequacy in achieving its aims. The committee reported in September 2008 and noted that there was widespread support for the Code which was viewed as a 'significant step towards increasing the level of transparency surrounding lobbying activities'.³ However, the committee noted that it received evidence on a range of issues including:

- whether the coverage of lobbyists is adequate;
- procedural fairness;
- regulatory burdens;
- whether the coverage of parliamentarians is adequate; and
- post-employment prohibitions.

1.13 While acknowledging that some aspects of the Code were not wholly supported by stakeholders, the committee noted that implementation of the Code was in a relatively early stage and that it may be some time before it became clear if its objectives were realised. The committee recommended that the committee conduct a further inquiry into the operation of the Code in the second half of 2009.⁴

Changes to the Register of Lobbyists

1.14 In March 2010, the then Special Minister of State, Senator the Hon Joe Ludwig, conducted a roundtable meeting with key lobbying industry stakeholders after which a discussion paper on possible reforms of the Code was released.⁵

2 Senator the Hon John Faulkner, Special Minister of State and Cabinet Secretary, *Senate Hansard*, 13 May 2008, p. 1510.

3 Senate Standing Committee on Finance and Public Administration, *Knock, knock...who's there? The Lobbying Code of Conduct*, p. 5.

4 Senate Standing Committee on Finance and Public Administration, *Knock, knock...who's there? The Lobbying Code of Conduct*, p. 17.

5 Department of the Prime Minister and Cabinet, *Submission 16*, pp 1–2, Attachment B.

Following consideration of submissions from interested parties, two changes to the Register of Lobbyists were announced:

- to enhance openness and transparency, lobbyists will be required to disclose on the Register the details of any former government representatives employed by their firm as lobbyists; and
- the introduction of measures to streamline the regulatory and administrative arrangements for registration:
 - signed statutory declarations submitted for registration purposes will be accepted electronically or by fax, without the need to also provide the original document; and
 - regular updates will only be required twice yearly instead of quarterly, with the continuing requirement for any change to the lobbyist's details to be made as soon as practicable and within 10 business days after the change occurs.⁶

6 Special Minister of State for the Public Service and Integrity, the Hon Gary Gray AO MP, 'Changes to the Lobbyists Register', *Media Release*, 1 August 2011.

Chapter 2

Issues

2.1 The committee received evidence from a range of organisations which were generally supportive of the Lobbying Code of Conduct (the Code) and the Register of Lobbyists (the Register). The Accountability Round Table was typical of most submitters in saying that:

The Lobbying Code of Conduct has been an important first step towards achieving transparency, integrity and honesty in the conduct of lobbying.¹

2.2 Lobbying firms in general were supportive of the Code and the Register and believed 'that they have contributed to good governance in the industry and provide greater transparency'.² Government Relations Australia, for example, submitted that:

We believe the last three years indicate that the Code and associated Register have been highly effective in achieving their objectives. In our experience, the obligations of the Code are taken seriously by both government relations practitioners and government personnel in terms of ethical standards as well as the high level of compliance with disclosure obligations.³

2.3 The Department of the Prime Minister and Cabinet (the department), which has responsibility for administration of the Code and the Register, commented that it is operating effectively and that compliance with the registration process requirements has been high.⁴ Mr David Macgill, the Department of the Prime Minister and Cabinet, went on to comment:

I think the register operates effectively. I think lobbyists generally are happy with the response that the department provides them as in the turnaround for registration and updates of clients. I know that some of the people at the roundtable meeting expressed their appreciation of the way the Commonwealth administers the scheme.⁵

2.4 Mr Les Timar, Government Relations Australia, also commented that the current scheme works effectively and any moves to significantly change the operation

1 Accountability Round Table, *Submission 8*, p. 1.

2 Kreab Gavin Anderson, *Submission 9*, p. 1. See also Profile Management Consultants, *Submission 2*, p. 1; Government Relations Professionals Association, *Submission 6*, p.1; Government Relations Australia, *Submission 10*, p. 2; Public Relations Institute of Australia, *Submission 12*, p. 1.

3 Government Relations Australia, *Submission 10*, p. 2.

4 Department of the Prime Minister and Cabinet, *Submission 16*, p. 3.

5 Mr David Macgill, Assistant Secretary, Department of the Prime Minister and Cabinet, *Committee Hansard*, 21 February 2012, p. 5.

and administration of the Code could upset the current balance between transparency and the burden of compliance. Mr Timar stated:

I am reasonably well aware of the various models that operate around the world, and I absolutely recognise that the Australian government has a choice as to how heavy handed, if you will, the regulatory regime in Australia is going to be. This code that was introduced in 2008 is, in our estimation, an effective piece of regulation that is achieving the end that it was designed to achieve. Of course, there are other models that are possible. I take the view that in terms of the balance between public accountability and transparency on the one hand and the issue of the free flow of information between the government and non-government sectors as well as what you might call the compliance burden on the other, the current regime that the Australian government has in place is a good regime.⁶

2.5 The committee also received evidence from a number of individuals and organisations which were supportive of the Code but desired a more intense model of regulation, including so called 'coverage' issues and disclosure of private meetings. Many of the matters raised were similar to those canvassed in the committee's previous report.

2.6 Changes suggested by submitters included:

- strengthening the Code by enshrining it in legislation;⁷
- administration and enforcement of the Code by an independent body;⁸
- expanding the Code to cover independent and opposition members of parliament as targets of lobbying; and
- harmonisation of Commonwealth and state lobbyist registers and codes.⁹

2.7 There were a variety of views put forward by submitters on post-employment prohibitions for members of parliament and government officials regarding lobbying. Many lobbying organisations felt that these provisions were unduly harsh whilst the

6 Mr Les Timar, Managing Director, Government Relations Australia, *Committee Hansard*, 21 February 2012, p. 10.

7 See for example Mr Bob Such MP, *Submission 1*, p. 1; Queensland Integrity Commissioner, *Submission 7*, p. 12; Mr Guy Barnett, *Submission 14*, p. 1; Australian Greens, *Submission 17*, p. 4.

8 See for example Mr Bob Such MP, *Submission 1*, p. 1; NSW Greens Political Donations Research Project, *Submission 5*, p. 9; Australian Council on Smoking and Health (ACOSH), *Submission 11*, pp 2–3; Australian Greens, *Submission 17*, p. 4.

9 See for example Action on Smoking and Health Australia, *Submission 3*, p. 3; Queensland Integrity Commissioner, *Submission 7*, p. 12; Accountability Round Table, *Submission 8*, pp 3–4.

Accountability Round Table and others recommended that these provisions be strengthened.¹⁰

Coverage of lobbyists

2.8 As identified in the committee's previous inquiry into the Code, 'the definition of "lobbyist" lies at the heart of the Code because this determines who will be affected by its application'.¹¹ The Code applies to third-party lobbyists and defines a lobbyist as:

...any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client.¹²

2.9 This is the very rationale for the Code as outlined in the statement made by the then Special Minister of State, Senator the Hon John Faulkner, upon the establishment of the Code in 2008:

The objective of the code is not to make every company whose staff or executives visit a Minister sign a register. Rather it is to ensure Ministers and other Government representatives know whose interests are being represented by lobbyists before them and to enshrine a code of principles and conduct for the professional lobbying industry.¹³

2.10 The Code therefore excludes the following individuals and organisations from the definition of lobbyists:

- charitable, religious and other organisations that are endorsed as deductible gift recipients;
- non-profit associations or organisations constituted to represent the interests of their members;
- individuals making representations on behalf of relatives or friends about their personal affairs;
- members of trade delegations visiting Australia;
- registered tax agents, Customs brokers and other persons who are registered under an Australian government scheme regulating members of that

10 See for example Action on Smoking and Health Australia, *Submission 3*, p. 3; Hawker Britton, *Submission 4*, pp 12–13; Government Relations Professionals Association, *Submission 6*, p. 4; Accountability Round Table, *Submission 8*, pp 11–13.

11 Senate Standing Committee on Finance and Public Administration, *Knock, knock... who's there?: The Lobbying Code of Conduct*, September 2008, p. 6.

12 Australian Government, *Lobbying Code of Conduct*, June 2011, section 3.5, http://lobbyists.pmc.gov.au/docs/code_conduct.pdf (accessed 15 February 2012).

13 Senator the Hon John Faulkner, Special Minister of State and Cabinet Secretary, *Senate Hansard*, 13 May 2008, p. 1511.

profession, provided that their dealings with government are part of the normal day-to-day work of people in that profession;

- members of professions such as doctors, lawyers or accountants who make occasional representations to government on behalf of others in a way that is incidental to the provision to them of their professional services; and
- any person or organisation engaging in lobbying activities on their own behalf rather than a client.¹⁴

2.11 While a number of submitters desired an expansion of the Code to include all organisations who 'lobby' government, little evidence was provided to support the contention that there was a need for this substantial change in policy.

2.12 There was some concern, however, that the current arrangements excluded some organisations that effectively lobby on behalf of third parties but are not registered due to the exemption for the provision of professional services.

2.13 It was claimed that these organisations regularly promote the interests of their clients directly to both government and senior official levels but are not required to be registered.¹⁵ Lobbying firm Profile Management Consultants considered this to be an oversight that should be corrected as it considered in many cases the professional service firms 'operate effectively as competitors to our firm'.¹⁶

2.14 Government Relations Australia also commented on this issue and stated that 'we think one area of improvement would be to modify the Code such that all parties seeking to interact with government clearly understand that its basic ethical standards apply to them'.¹⁷ Mr Timar, Government Relations Australia, explained further:

We clearly as a firm describe ourselves as a government relations firm and we are absolutely covered under the code and are happy to be covered under the code. What I am getting at is that there are other consultants or indeed other kinds of professional service firms who say, 'Well, we are not a lobbyist and therefore we will not register under the code,' even though in a practical sense, in an activity sense, they are engaging with government on behalf of a client and seeking to influence a government decision. I cannot for the life of me see what the distinction is between what that consultant is doing and what my firm is doing.¹⁸

2.15 Mr Timar concluded:

14 Australian Government, *Lobbying Code of Conduct*, June 2011, section 3.5.

15 Profile Management Consultants, *Submission 2*, p. 1; Kreab Gavin Anderson, *Submission 9*, p. 4.

16 Profile Management Consultants, *Submission 2*, p. 1.

17 Government Relations Australia, *Submission 10*, p. 2.

18 Mr Les Timar, Managing Director, Government Relations Australia, *Committee Hansard*, 21 February 2012, p. 11.

If the nature of the contact or the representation that that expert consultant is making is to influence a government decision or a policy setting then I think that is exactly what they are doing and that that does not really have any distinction with the sort of work that we do.¹⁹

2.16 While there were a number of submissions arguing for a dramatic expansion of the regulatory scope of the Code, the committee believes that the arguments against this are compelling, while the case for such a substantial regulatory expansion was lacking.

2.17 The Public Relations Institute of Australia (PRIA) opposed expanding the definition of lobbyist in the Code to include in-house lobbyists. It stated:

PRIA strongly supports the exclusion of in-house lobbyists from the requirement to register.

In-house lobbyists can be found in government relations, public relations, public affairs or corporate affairs roles in multinationals, Australian companies and the not-for-profit sector. Lobbying functions are also performed by directors and other senior executives.

PRIA does not believe, given that it is clear whose interests they represent, that a requirement for in-house lobbyists to be listed on a register would provide additional transparency. It is the transparency of lobbyists' motivations and position around the table when propositions are being discussed which should be ensured through the disclosure of whom they represent.²⁰

2.18 Mr Les Timar, Government Relations Australia, also commented on the application of the Canadian system to Australia and stated:

In my view, based on my understanding of the Australian system and the way the industry works here, I would suggest that grafting the Canadian system on to Australia would represent serious overregulation. I think there would be some very significant risks from a public interest point of view in going down that track which I would be happy to go into further if you would like me to.²¹

2.19 Mr Timar went on to stated further:

...if that much more heavy regulation approach were introduced, it would have to apply—as indeed it does in Canada—to every non-government interest. So it would not simply be government relations firms; it would need to apply to the in-house practitioner within a corporation or organisation, it would need to apply to the CEO and senior executives

19 Mr Les Timar, Managing Director, Government Relations Australia, *Committee Hansard*, 21 February 2012, p. 11.

20 Public Relations Institute of Australia, *Submission 12*, p. 2.

21 Mr Les Timar, Managing Director, Government Relations Australia, *Committee Hansard*, 21 February 2012, p. 13.

within that corporation who engage with government, it would need to apply to the industry association, to the not-for-profit organisations et cetera. So it would massively expand the reach of the regulatory arrangements. In terms of the chilling effect that I referred to, companies would give a second thought to engaging with, or frankly not seek to engage with, government in certain circumstances where it believed it was running the risk of prejudicing its own commercial interests by so engaging...I would ask you the question: in the circumstance that the full details of a particular meeting between a non-government and a government party were required to be registered and published, would that company bother doing that in those particular circumstances? I think that would be to the cost of government and therefore to the public interest.²²

2.20 In response to calls for an expansion to coverage of the Code and Register, the department noted that the government's rationale for the Code and Register are set out in the ministerial statement of May 2008. As such, the 'Code focuses on transparency in the third-party lobbying sector, rather than in-house lobbyists working for companies, on the basis that it is clear whose interests they represent'.²³ The department concluded:

As far as the government is concerned, the problem that was to be addressed by the Lobbying Code of Conduct and register has been addressed, and that is that government representatives must be able to know whose interests are being pushed, if you like, when they have meetings with lobbyists.²⁴

2.21 In addition, the department indicated an expansion of the definition of lobbyist would significantly increase the number of entities listed on the Register to around 5,000 lobbyists.²⁵ The department additionally stated that an expanded lobbyist register would impose a greater administrative load and require significant upgrades in computer equipment and systems.²⁶ By way of example, the department informed the committee that the Canadian Commissioner of Lobbying has a staff of around 28 and a budget of \$4.5 million.²⁷

22 Mr Les Timar, Managing Director, Government Relations Australia, *Committee Hansard*, 21 February 2012, p. 14.

23 Department of the Prime Minister and Cabinet, *Submission 16*, p. 1.

24 Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch, Department of the Prime Minister and Cabinet, *Committee Hansard*, 21 February 2012, p. 4.

25 Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch, Department of the Prime Minister and Cabinet, *Committee Hansard*, 21 February 2012, p. 1.

26 Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch, Department of the Prime Minister and Cabinet, *Committee Hansard*, 21 February 2012, p. 1.

27 Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch, Department of the Prime Minister and Cabinet, *Committee Hansard*, 21 February 2012, p. 6.

Post-employment prohibitions

2.22 As part of the amendments to the Code announced in August 2011, the government introduced the requirement that lobbyists must disclose on the Register the details of any former government representative employed by their firm.²⁸ The purpose of the government's amendment was to enhance openness and transparency.²⁹

2.23 The Code additionally prohibits certain people from engaging in lobbying activities for a period of 12 months after they cease their employment on matters that they had official dealings with in their last 12 months of employment. The prohibitions apply to:

- persons employed in the offices of ministers or parliamentary secretaries at the Adviser level or above;
- members of the Australian Defence Force at Colonel level or above (or equivalent); and
- Agency Heads or members of the Senior Executive Service (or equivalent).³⁰

2.24 Former ministers and parliamentary secretaries are restricted from lobbying for a period of 18 months on matters which they dealt with in the final 18 months of their service. Ministers and parliamentary secretaries are also subject to greater restrictions under the Commonwealth Government's *Standards of Ministerial Ethics*.

2.25 Submitters were divided over the issue of post-employment restrictions on lobbying. The Accountability Round Table and the Australian Greens advocated strengthening the post-separation employment provisions of the Code whilst lobbying organisations such as the GRPA and Government Relations Australia argued the contrary view: that the current restrictions are excessive and restrictive to former ministers and staff.³¹

2.26 The committee is of the view that there should be no further restrictions placed upon former ministerial staff or former ministers.

2.27 The committee is also of the view that some submissions put too much emphasis on 'personal contacts' and the possibility of these influencing decisions at the Commonwealth level.

28 Australian Government, *Lobbying Code of Conduct*, June 2011, section 5.1.

29 Mr Gary Gray, Special Minister of State for the Public Service and Integrity, 'Changes to Lobbyists Register', *Media Release*, 1 August 2011. See Department of the Prime Minister and Cabinet, *Submission 16*, Attachment 4, p. 1.

30 Australian Government, *Lobbying Code of Conduct*, June 2011, sections 7.1 and 7.2.

31 Accountability Round Table, *Submission 8*, p. 6; Australian Greens, *Submission 17*, p. 8; Government Relations Professionals Association, *Submission 6*, p. 4; Government Relations Australia, *Submission 10*, p. 3.

2.28 While keeping a watch on these issues is important, experiences that have been derived from the state or local level should not necessarily guide regulation at the Commonwealth level, where no need for such has been demonstrated.

Harmonisation of Commonwealth and state lobbyist registers

2.29 Of concern to some submitters was the duplication and overlap of the Commonwealth and state lobbying registers.³²

2.30 This issue is not one that concerned the committee. It is entirely appropriate that different jurisdictions develop schemes, regulations and arrangements that reflect the differing needs and priorities of states, territories and the Commonwealth.

More frequent updates of the register

2.31 The Code currently requires lobbyists to ensure that their details are up-to-date on the Register within 10 business days of 31 January and 30 June every year.³³ Lobbyists are also required to ensure that any changes to their details are updated on the Register within 10 business days of any change occurring.³⁴

2.32 As announced in August 2011, the government reduced from four to two the number of times that lobbyists are required to update their details per year. The department submitted to the committee that:

The streamlining of the administrative arrangements to require reporting twice yearly was intended to make the Commonwealth Register more user-friendly while retaining its ongoing integrity...This change has not resulted in any diminution of the integrity of the Register because the requirement for lobbyists to update their entry on the Register within 10 business days of any change to their details remains in place.³⁵

2.33 The Accountability Round Table raised concerns over this change and stated that the reduction in annual reporting means that 'the provision of changes of details to the Register may be "overlooked" for up to 6 months and transparency in that area reduced'.³⁶ The Accountability Round Table recommended that the Code revert to the quarterly reporting requirement. It argued that with the use of modern technology, the Internet and the fact that appointment details are already recorded in diaries should ensure that the reporting burden is slight.³⁷

32 Action on Smoking and Health Australia, *Submission 3*, p. 3; Kreab Gavin Anderson, *Submission 9*, p. 4; Government Relations Professionals Association, *Submission 10*, p. 4; Public Relations Institute of Australia, *Submission 12*, p. 5.

33 Australian Government, *Lobbying Code of Conduct*, June 2011, sections 5.5–5.6.

34 Australian Government, *Lobbying Code of Conduct*, June 2011, section 5.4.

35 Department of the Prime Minister and Cabinet, *Submission 16*, p. 2.

36 Accountability Round Table, *Submission 8*, p. 4.

37 Accountability Round Table, *Submission 8*, p. 11.

2.34 In contrast to the view put forward by the Accountability Round Table, Government Relations Australia found the compliance burden associated with the Register 'is significant but manageable'.³⁸

2.35 The Queensland Integrity Commissioner informed the committee that the reduction in the number of annual reporting times is 'not a matter of huge substance'.³⁹

Procedural fairness

2.36 Since the establishment of the Code on 1 July 2008, the department has had responsibility for its administration. The Secretary of the department is vested with the power to remove lobbyists from the Register if they have:

- contravened any of the terms of the Code;
- provided incorrect details on the Register; or
- failed to up-date their details on the Register within the specified time periods.⁴⁰

2.37 The Special Minister of State for the Public Service and Integrity, in their absolute discretion, may also direct the Secretary to remove a lobbyist from the Register.⁴¹

2.38 The department informed the committee that to date, the Secretary has not exercised his power to remove a lobbyist from the Register.⁴² The department commented that in its opinion as administrators of the Code 'that compliance with the registration process requirements has been high, with only a small percentage of applications requiring follow up'.⁴³ However, one lobbyist had been found to be in breach of the Code for failing to update the list of clients. In that case, the Secretary wrote to the company involved and reminded them of their obligations.⁴⁴

2.39 Evidence received by the committee raised a range of concerns in relation to the sanction provision. Some submitters viewed the current arrangements as unenforceable. It was also stated that the penalty of removal from the Register is a 'blunt instrument'. The Accountability Round Table stated:

38 Government Relations Australia, *Submission 10*, p. 2.

39 Dr David Solomon, Queensland Integrity Commissioner, *Committee Hansard*, 21 February 2012, p. 19.

40 Australian Government, *Lobbying Code of Conduct*, June 2011, section 10.2.

41 Australian Government, *Lobbying Code of Conduct*, June 2011, section 10.4.

42 Department of the Prime Minister and Cabinet, *Submission 16*, p. 3.

43 Department of the Prime Minister and Cabinet, *Submission 16*, p. 3.

44 Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch, Department of the Prime Minister and Cabinet, *Committee Hansard*, 21 February 2012, p. 5.

...it is up to those who are lobbied to police the system and enforce it. The instrument they are given is a blunt one. Unless the breach is in fact very serious, or there is a significant pattern of non-compliance, it is unlikely that registration will be taken away. The Secretary and Special Minister of State who exercise the discretion will also always be open to challenge on the basis of possible lack of independence and impartiality because they or their colleagues are parties in the "government processes" the subject of lobbying.⁴⁵

2.40 There was a call for graduated sanctions and public reporting of breaches.⁴⁶

2.41 Government Relations Australia supported graduated sanctions: while noting that deregistration may be appropriate for serious misconduct, it argued that there will be other instances of inadvertent or unintended noncompliance where a warning or other measure (such as 'probation') would be the proportionate response, particularly where the firm or individual has a solid track record of compliance.⁴⁷

2.42 The committee notes that this matter was raised during the roundtable discussions with the minister and stakeholders in 2010.

2.43 The lack of a right of appeal and independent scrutiny of decisions was canvassed in submissions.⁴⁸ Government Relations Australia for example, commented that currently there are very limited avenues for an affected party to appeal a decision to not register or to deregister a particular lobbyist other than potentially the Federal Court or High Court.⁴⁹ It was suggested that either the Commonwealth Ombudsman or the Administrative Appeals Tribunals could provide review of relevant decisions on both the merits and at law.

2.44 In responding to the concerns about sanctions, Mr Macgill, Department of the Prime Minister and Cabinet, informed the committee:

There is not just one form of sanction. The code says that a lobbyist may be removed for a breach but that does not mean that any breach results in removal...

I do not think a tiered system needs to be spelt out. Depending on the nature of the breach we would go so far as to recommend to the minister that a lobbying firm be removed; for a lesser breach we would recommend something lesser...A suspension for three months, for example. The lobbying firm would not be able to lobby for that period. We have not had

45 Accountability Round Table, *Submission 8*, p. 6; see also Australian Greens, *Submission 17*, p. 7.

46 See for example, Accountability Round Table, *Submission 8*, p. 15; Australian Greens, *Submission 17*, p. 7.

47 Government Relations Australia, *Submission 10*, p. 3.

48 See for example, Mr Guy Barnett, *Submission 14*, p. 1; Australian Greens, *Submission 17*, p. 7.

49 Government Relations Australia, *Submission 10*, p. 3.

to consider these issues because the only breach that we are aware of was one where we thought that a letter reminding the company of its obligations was sufficient.⁵⁰

2.45 The department also commented on the possible reporting on the Register website of breaches of the Code. The department stated:

Having given some thought to the question of the appropriateness of publicising breaches of the requirements of the Code on the Register website, the Department has some concerns that it may not be appropriate to do so as a matter of course. As indicated at the hearing on 21 February, the then Secretary of the Department decided that the appropriate action to take in respect of the breach that had been identified in 2009 was to write to the CEO of the firm to remind it of its obligations under the Code to keep its client details up to date. The Department also reminded all lobbyists of the need to keep their client details up to date.

Publication of the details of any breach of the Code and action taken would effectively add to the penalty imposed for the breach. Particularly in the case of an inadvertent breach, the Department considers that publication of the details on the Lobbyist Register website would not necessarily be warranted. A better approach would perhaps be for publicity to be given to a breach and the action taken in response to it if the circumstances of the individual case warrant it. This could either be achieved by way of a ministerial press release or by notification on the Register website.⁵¹

Other issues raised

Independent oversight

2.46 A number of submitters suggested that the integrity of the Code and the Register could be improved by giving oversight of its operations to an independent body or authority.⁵² The Australian Council on Smoking and Health submitted that:

Establishment of an independent watchdog to monitor lobbying activities and enforce the Lobbying Code of Conduct is essential to maintaining integrity and preserving public trust in our democratic process.⁵³

2.47 The Australian Greens proposed that oversight of lobbying should rest with an independent body similar to the Canadian Commissioner of Lobbying which has existed since 2008.⁵⁴ The Greens stated that:

50 Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch, Department of the Prime Minister and Cabinet, *Committee Hansard*, 21 February 2012, pp 6–7.

51 Department of the Prime Minister and Cabinet, Answer to Question on Notice, dated 23 February 2012, p. 1.

52 See for example Action on Smoking and Health Australia, *Submission 3*, p. 3; NSW Greens Political Donations Research Project, *Submission 5*, p. 9; Australian Council on Smoking and Health, *Submission 11*, pp 2–3; Australian Green, *Submission 17*, p. 4.

53 Australian Council on Smoking and Health, *Submission 11*, pp 2–3.

Currently regulation of the scheme rests with the Executive. An independent authority, with the capacity and integrity to ensure regulations are applied equally to all concerned, will ensure decisions are not left to the discretion of political representatives.⁵⁵

2.48 The committee is of the view that there is no evidence to support such a substantial expansion of the regulation of contact between government and representatives.

Enshrining the Code in legislation

2.49 There was support from some submitters for the Code to be enshrined in legislation so as to strengthen lobbying regulation and provide appropriate sanctions and appeal rights.⁵⁶ For example, the Queensland Integrity Commissioner was concerned that enforcement of the Code relies solely upon the threat of withdrawal from the Register.⁵⁷ The Commissioner argued that if the Code were to be backed up in legislation additional penalties could be applied to ensure compliance by lobbyists.⁵⁸

2.50 The Accountability Round Table held similar views on the enforcement of the Code stating that under the current approach:

A non-legislative approach also limits the sanctions that can be imposed for breaches of the code leaving the blunt instrument of withdrawal of registration as the only feasible sanction.⁵⁹

2.51 The Accountability Round Table therefore recommend that:

A legislative approach would remove the need for such limitations. It would also have other benefits. It would place responsibility for the design and ultimate control and enforcement of the system with the Parliament rather than the Executive.⁶⁰

2.52 Lobbying firm Kreab Gavin Anderson was against enshrining the Code in legislation reasoning that the lobbying industry is already heavily regulated. The firm stated that it did not support the introduction of sanctions that duplicate existing provisions in law. Furthermore, as there have no serious breaches of the Code to date

54 Australian Greens, *Submission 17*, p. 4.

55 Australian Greens, *Submission 17*, p. 4.

56 See for example Dr Bob Such MP, *Submission 1*, p. 1; Queensland Integrity Commissioner, *Submission 7*, p. 12; Accountability Round Table, *Submission 8*, p. 7; Australian Greens, *Submission 17*, p. 4.

57 Queensland Integrity Commissioner, *Submission 7*, p. 4.

58 Queensland Integrity Commissioner, *Submission 7*, pp 11–12.

59 Accountability Round Table, *Submission 8*, p. 7.

60 Accountability Round Table, *Submission 8*, p. 7.

and most significantly, illegal interaction is already heavily regulated across Australia's federal and state jurisdictions. As a consequence, 'extra sanctions would not necessarily increase confidence in the operations of the Code and Register'.⁶¹

2.53 The committee is of the view that the operation of the Code is fulfilling the objectives outlined at its introduction and there is no need for legislation at this stage.

Prohibition of success fees

2.54 Some submitters proposed the banning of so-called 'success fees', as has occurred in some other jurisdictions.⁶²

2.55 The experience of success fees in some jurisdictions has been of concern, but no evidence of similar behaviour at the federal level was provided.

2.56 The committee is not of the view that success fees are somehow inextricably linked to corrupt practices. We see no need at the moment to interfere in private contracts to the extent of prohibiting forms and terms of payment.

Conclusions

2.57 The committee's inquiry into the Lobbying Code of Conduct and the Register of Lobbyists has found the regime established in 2008 is working effectively and provides transparency to this very important aspect of government activity. The committee considers that it is meeting its aim of allowing ministers and other government representatives to identify the interests being represented to them by those on the Register.

2.58 The committee notes that the vast majority of submitters supported the Code and Register. Evidence from the Department of the Prime Minister and Cabinet also pointed to high compliance with the requirements of the Register and recent improvements in administrative process which will assist in streamlining administrative processes.

2.59 The committee has considered evidence which called for changes to the Code. In particular, recommendations that the coverage be expanded. The committee does not consider that this is warranted. The committee believes that the code is meeting its defined objectives. While some submitters pointed to codes in overseas jurisdictions as best practice, the committee is mindful of the differences in the Australian parliamentary system and those of Canada and the United States. In addition, such an expansion would result in a significant increase in administrative requirements for both lobbyists and government. The committee does not believe that this would result

61 Kreab Gavin Anderson, *Submission 9*, p. 2.

62 See for example Dr Bob Such MP, *Submission 1*, p. 2; Accountability Round Table, *Submission 8*, p. 15; Australian Greens, *Submission 17*, p. 8.

in any further enhancement of transparency as it is clear whose interests are being represented.

2.60 In relation to the calls for the application of the Code to all members and senators, the committee notes the comments provided by the then Clerk of the Senate, Mr Harry Evans, to the committee's previous inquiry into the Code. The Clerk stated that expansion of the Code to members of parliament would give rise to 'several significant considerations'.⁶³ These considerations included that the Houses would be regulating the communications between their members and other persons including prohibiting members from dealing with certain persons (unregistered lobbyists). The Clerk noted that:

The Houses have not previously sought to regulate such communications, and an argument would no doubt be raised that it is not proper for them to do so; surely, it could be argued, private members of the Parliament have a right to communicate with whomever they choose, just as they have the right to determine the sources of their information and the matters they will raise in the parliamentary forum.⁶⁴

2.61 In addition, the committee notes that some supporters of expanding coverage of the Code to all members of parliament point to problems in the States and Territories as justification of this view. The committee does not consider that a parallel can be drawn between the Commonwealth and matters that have arisen in the States and Territories. In particular, at the Commonwealth level there is often less direct ministerial involvement in decisions about contracts, business and planning. The committee is also mindful that the Commonwealth Parliament has well-established institutions such as committees, including Senate estimates committees, which ensure transparency and accountability in decision-making. The committee therefore opposes the expansion of the Code to all members of the Parliament.

2.62 The committee notes that there was mixed support for extending the period of post employment bans on government representatives. The committee does not support such a move as it believes that the current ban timeframes are appropriate to ensure that the integrity of the regime is maintained. In addition, the committee notes that the Register will now identify any former government representative who is registered as a lobbyist.

2.63 Some submitters called for greater harmonisation of the lobbying codes across Commonwealth and state jurisdictions. However, the committee does not support such an approach. The fact that different regimes operate around Australia is not a sign of inconsistency, rather it is a sign of diversity reflecting the needs and priorities of different jurisdictions.

63 Senate Standing Committee on Finance and Public Administration, *Knock, knock...who's there? The Lobbying Code of Conduct*, September 2008, Mr Harry Evans, *Submission 2*, p. 1.

64 Senate Standing Committee on Finance and Public Administration, *Knock, knock...who's there? The Lobbying Code of Conduct*, September 2008, Mr Harry Evans, *Submission 2*, p. 2.

2.64 The committee does believe that the government should consider a protocol to inform the public of breaches of the Code. If this was to be incorporated in current operations, the Code website could simply include a section to report details of breaches and the sanction applied.

2.65 Other suggestions for changes received in evidence included establishing an independent commissioner, incorporating the Code in legislation and prohibiting success fees. The committee considers these changes are not required as the Code and Register as established are effective.

Senator Scott Ryan
Chair

Dissenting report by Senator Rhiannon on behalf of The Australian Greens

Overview

1.1 The Australian Greens are disappointed but not surprised that this inquiry has failed to take up the opportunity to properly regulate lobbying activity, making not one recommendation for reform. We have made eight recommendations for reform (below).

1.2 It was clear from the start that the government lacked an appetite for reform. The Australian Greens brought on this inquiry after the government sidestepped its obligation to initiate a review recommended by the same Committee in 2008.

1.3 The inquiry has overlooked the clear evidence from many that current regulation is deficient.

1.4 The Lobbying Code of Conduct and Register scheme lags well behind other countries such as Canada and the United States.¹ It is also out of step with The Organisation for Economic Co-operation and Development (OECD) reports and guidelines on lobbying to which Australia is a party. The Department of Prime Minister and Cabinet admitted in the inquiry that the government has not responded to the OECD's work.

1.5 The Queensland Integrity Commissioner Dr David Solomon AM succinctly summed up the flaws in the scheme during the public hearing:

The problem simply is that we have a system that suggests that lobbying is being regulated, but the amount of lobbying that is being regulated is a relative small amount of the lobbying that goes on. The risk is that people will think that there is proper regulation of lobbying, when the fact is that that is not what the system is designed to give us.²

1.6 The legacy the public is now left with is inadequate regulation that Dr Solomon describes as:

...too narrowly focused on relatively few lobbyists...[that] do(es) not provide for adequate and timely disclosure of lobbying activities...ignore(s) the lobbying of non-government legislators and...contain(s) no real mechanism for supervision or policing and very few sanctions for breaches of the various codes and laws.³

1 See Office of the Commissioner for Lobbying Canada: <http://www.ocl-cal.gc.ca/eic/site/lobbyist-lobbyiste1.nsf/eng/home>

2 Transcript of Inquiry Public Hearing, Tuesday 21 February 2012, p 18.

3 ibid p 15.

1.7 The inquiry accepted the argument that the status quo is adequate, partly on the basis of the spurious reasoning that because there has been a high level of compliance then reform is not necessary.

1.8 This ignores the fact that a large slab of lobbying that does occur, for example by in-house lobbyists and of non-government MPs, is not caught by the scheme. The Department of Prime Minister and Cabinet estimates that around 5,000 would be required to register if in-house lobbyists were covered by the scheme, compared to 934 entities and individuals currently on the register.⁴

1.9 The inquiry gives excessive weight to the argument that the scheme meets its defined objectives set by Senator Faulkner upon establishing the Code in 2008: ‘to ensure Ministers and other Government representatives know whose interests are being represented by lobbyists before them...’

1.10 The inquiry relies on this to rebut calls for greater regulation. The argument is put that it is clear to MPs whose interests in-house lobbyists represent and therefore there is no need to bring them within the scheme.

1.11 Unfortunately this overlooks the additional and very important objective spelt out by Senator Faulkner – the right of ‘the public to know who stands to benefit from the efforts of lobbyists’.

1.12 While Ministers might know who is being represented when in-house lobbyists meet with them, the public remains blind to what goes on behind closed doors under the current scheme.

1.13 It remains virtually impossible for the public to find out who is lobbying and for what purpose.

Report failings

1.14 Some key issues are totally absent in this report, such as whether there should be more detailed public reporting of lobbying activity. This is despite the Queensland Integrity Commissioner Dr David Solomon AM in his public appearance before the Committee identifying this as ‘crucial’ and describing current reporting obligations as ‘very minor’. He named a lack of transparency as one of the scheme’s major failures.

1.15 While the additional costs of tightening lobbying regulation are warmly embraced as barriers by the Inquiry, the benefits to the public and democracy of adopting a system such as that seen in Canada are not explored.

1.16 The overseas experience is paid short shrift, despite excellent regulatory models in Canada and the US. The report ignores OECD reports and guidelines that set out what constitutes appropriate regulation and fails to consider high profile

4 Transcript of Inquiry Public Hearing, Tuesday 21 February 2012, p 1.

corruption scandals involving lobbyists in Queensland, NSW, United States and United Kingdom which serve as a warning of the need to better protect against corruption risks.

1.17 The Australian Greens are also concerned that there may have been a tendency to provide more weight to the views of the lobbyist industry who oppose additional regulation than to academics, accountability campaigners and non-government groups who made submissions to the inquiry.

1.18 This follows the trend set by the government when it began its first ‘review’ of the scheme in 2010 and invited a select group of lobbyists to a roundtable (five of which had made political donations to either the Government, the Coalition or both).

1.19 In the two and half short hours given over to public hearings for this Inquiry no academics or non-government organisations which made submissions critical of the scheme were invited to present, with Labor and Coalition MPs on the Committee refusing my request to invite them in the interests of balance.

1.20 Only three invitations were extended and accepted – the QLD Integrity Commissioner, bureaucrats from the Department of the Prime Minister & Cabinet and a major lobbying firm (also a donor to the major parties).

1.21 In conclusion, this inquiry has been a missed opportunity to reform a scheme described by Dr Solomon as a ‘very light touch system that does not really investigate anything’.⁵

Greens vision for regulation of lobbying

1.22 The Australian Greens have a strong interest in strengthening the democratic system by making the decision making process more transparent and accountably.

1.23 In 2007, prior to the current scheme, Australian Greens Leader Bob Brown introduced the Lobbying and Ministerial Accountability Bill 2007 to regulate the industry.

1.24 While we believe lobbying is a legitimate activity, the Australian Greens share the concerns of many that the current Lobbying Code of Conduct and Register is inadequate to meet public expectations that what happens behind closed doors between lobbyists and politicians is appropriately regulated and that the lobbying ‘footprint’ is clear for all to see.

1.25 Corruption risks are real, as has recently been witnessed in three high profile US and UK lobbyist scandals. They can range from direct bribing of those with decision-making power to a culture of ‘policy capture’ where governments tend to favour lobbyists’ interests over those of the community.

5 Transcript of Inquiry Public Hearing, Tuesday 21 February 2012, p 20.

1.26 With the light off lobbyists in Canberra, or at the very best substantially dimmed, it is impossible to see who is gaining access to politicians and high level bureaucrats and whether deals are being done.

1.27 The Australian Greens believe the public has a legitimate right to know the 'who', 'what', 'where' and results of lobbying. The current system is not delivering this.

1.28 There is legitimate concern in the community that not everyone has the same opportunity to lobby decision makers and that those with the deepest pockets and the most power and connections are better able to influence policy making.

1.29 The public cannot be confident that decisions are being made on merit after considering a broad range of views, or because of relationships the public is not privy to.

1.30 The Australian Greens believe it is possible and desirable to strengthen the current scheme, without creating unreasonable barriers to groups participating in the democratic process.

Summary of recommendations

1. Establish an Office of the Commissioner of Lobbying

Recommendation 1

1.31 The Australian Greens believe oversight of lobbying should rest with an independent body similar to the Canadian Commissioner of Lobbying. This independent body would report direct to federal parliament and have auditing and investigative powers and a mandate to enforce a new Lobbying Act and Lobbyists' Code of Conduct.

2. Provide a legislative framework

Recommendation 2

1.32 The Australian Greens support a legislative framework for the regulation of lobbying.

3. Expand who is the subject of lobbying

Recommendation 3

1.33 The Australian Greens believe there is a strong case for expanding the target of lobbying from government ministers to include all MPs and Senators, including cross benchers and opposition MPs, as occurs in the US and Canada.

4. Widen who is defined as a lobbyist

Recommendation 4

1.34 Expand the scope of lobbying to include corporations and organisations employing in-house lobbyists, many of whom are in a position to influence government policy.

5. Strengthen disclosure requirements

Recommendation 5

1.35 The Australian Greens believe the scheme should require the disclosure, in a timely manner, of when the lobbying occurred, who stood to benefit, who was lobbied, the subject matter of the lobbying and the meeting outcome.

6. Enhance compliance and review

Recommendation 6

1.36 The Australian Greens support: the proposed Commissioner for Lobbying receiving and investigating complaints; strengthened and meaningful sanctions applying to MPs, public servants and lobbyists and proper appeal rights.

7. Strengthen post separation employment provisions

Recommendation 7

1.37 The Australian Greens believe there should be a five year ban on ex-ministers working as lobbyists.

8. Ban success fees

Recommendation 8

1.38 The Australian Greens support a ban on the payment of success fees to lobbyists.

Australian Greens' proposal in detail

Establish an Office of the Commissioner of Lobbying

The Australian Greens believe oversight of lobbying should rest with an independent body similar to the Canadian Commissioner of Lobbying. This independent body would report direct to federal parliament and have auditing and investigative powers and a mandate to enforce a new Lobbying Act and Lobbyists' Code of Conduct.

1.39 Currently regulation of the scheme rests with the Executive. An independent authority, with the capacity and integrity to ensure regulations are applied equally to

all concerned, will ensure decisions are not left to the discretion of political representatives.

1.40 The Office, based on the Canadian model, would ensure transparency and accountability in the lobbying of public office holders and contribute to confidence in the integrity of government decision-making. Its functions would include maintenance of the register, compliance, prevention and education work. A similar model exists in QLD where the Integrity Commissioner administers the lobbyist registration scheme.

Provide a legislative framework

The Australian Greens support a legislative framework for the regulation of lobbying.

1.41 Creating a legislative framework would strengthen the regulation of lobbying, for example providing for appropriate sanctions and appeal rights. Overseas jurisdictions such as Canada as well as Western Australia, Queensland and NSW have taken this step.

1.42 It has been argued that a legislative structure may encroach on the separation of powers between the judiciary and the parliament and risks a constitutional challenge based on the implied freedom of political communication.⁶ However this freedom is by no means absolute.⁷

Expand who is the subject of lobbying

The Australian Greens believe there is a strong case for expanding the target of lobbying from government ministers to include all MPs and Senators, including cross benchers and opposition MPs, as occurs in the US and Canada.

1.43 The current scheme which regulates only lobbying of ‘Government representatives’⁸ wrongly assumes that it is the Executive that has hold of parliament and decision-making and that there will always be majority government and disciplined parties. This ignores the reality of our Australian political system where there can be factions within parties which attracts lobbying of all MPs (eg on same-

6 Mr Harry Evans, former Clerk of the Senate, discussed in “Knock, knock...who’s there?” Report of the Standing Committee on Finance and Public Administration, September 2008, p 12.

7 David Rolph, Matt Vitins and Judith Bannister, *Media Law: Cases, Materials and Commentary*, Oxford University Press 2009, pp 270-271. In *Lange v Australian Broadcasting Corporation* it was found that the freedom would not invalidate a law provided: 1) that “the law is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government...”; and 2) “that the law is reasonable appropriate and adapted to achieving that legitimate object or end”.

8 Defined in the Code to include Ministers, parliamentary secretaries, ministerial staff, agency heads, public servants and members of the Australian Defence Force, cl 3

sex marriage, refugees) as well as minority governments where independents and minor parties may be key to decision-making. The reality is that those with power to allow or disallow a bill to pass may be the target of intense lobbying.

Widen who is defined as a lobbyist

Expand the scope of lobbying to include corporations and organisations employing in-house lobbyists, many of whom are in a position to influence government policy.

1.44 The revised scheme should go beyond third party professional lobbyists to adopt the NSW Independent Commission Against Corruption’s (ICAC) proposed definition of a “lobbying entity:

A body corporate, unincorporated association, partnership, trust, firm or religious or charitable organisation that engages in a lobbying activity on its own behalf.

1.45 This would require registration of industry peak bodies and most religious and charitable bodies and all corporations that lobby by use of their own in-house staff, including board members.⁹

1.46 Dr David Solomon points out the definition echoes Canada’s definition of in house lobbyists (organisations) and in house lobbyists (corporations).¹⁰

1.47 Limiting the code to third party lobbyists, or ‘hired guns’, is like using a butterfly net to capture a lion. It misses those such as in-house lobbyists in big corporations such as BHP Billiton and Telstra and interest groups such as the AMA, industry bodies such as the Australian Hotels Association, the Minerals Council of Australia or the Australian Industry Group, unions, churches, and not-for-profit community groups like GetUp!:

“... if the point ... is to shed light upon those who seek to influence the government, then the federal lobbying code of conduct, as currently constituted, fails to fully do that. Many of the lobbyists active in Canberra, as well as many of those who are the focus of their lobbying, are being missed out entirely by the code, as it is currently constituted”.¹¹

1.48 The government employs a jaundiced argument that the scheme does not need expanding because the Code’s main aim is to allow government representatives to know who they are meeting with and who is represented. This ignores a key function of the regulatory scheme: to provide transparency so the public can scrutinise how decisions are made.

9 Dr David Solomon, *Lobbying: Is registration sufficient?*, APSAC Conference Paper, November 2011, p 12.

10 Ibid p 12.

11 Chari, Hogan and Murphy, “Regulating lobbying: a global comparison”, Manchester University Press, 2010, p 94.

1.49 ICAC takes odds with the argument that non-profit making peak bodies should remain beyond the reach of the scheme:

“The difference in motive was claimed as a reason why the regulation of the lobbying of peak body organisations was unnecessary. This argument did not address the problem of undisclosed dealings, and the lack of public access to information and to decision-makers. It also did not address the existence of undisclosed opponents. There is no difference in principle, in method or in its effect between lobbying conducted by third party lobbyists and that conducted by any other entity seeking to persuade government of its view. All seek to use or have an effect on the resources or powers of government, all draw from the same group of methods and tactics to persuade government of the merit of their view, and most seek to make use of a friendly relationship.”¹²

1.50 Canada and the US capture in-house lobbyists. To qualify they must be remunerated (eg in Canada they must be paid or expect to be paid in excess of “reimbursement of reasonable expenses such as travel”) and meet a workload threshold (eg in Canada lobbying must exceed the equivalent of 20 percent of the duties of a single paid employee over a month).

Strengthen disclosure requirements

The Australian Greens believe the scheme should require the disclosure, in a timely manner, of when the lobbying occurred, who stood to benefit, who was lobbied, the subject matter of the lobbying and the meeting outcome.

1.51 Current disclosure requirements are very weak and do not allow the public to effectively scrutinise lobbying activities. The online lobbyist register does not detail when lobbying occurred, who stood to benefit, who was lobbied, what was the subject matter of the lobbying or the meeting outcome. There is no requirement to disclose the actual interest being represented.

1.52 In contrast, in Canada lobbyists are required to submit monthly communication reports with details of who they met, date of the meeting and general subjects covered. In the UK the Prime Minister’s website has a record of ‘Who Ministers are Meeting’.¹³ In NSW from July 2011 the NSW Department of Planning and Infrastructure has begun keeping a register on its website which lists contact between staff and registered lobbyists in relation to planning proposals.¹⁴

1.53 There should be clear direction on precisely what is required to ensure the disclosure is not so vague as to be meaningless.¹⁵ It should include a general

12 Quoted in Solomon, op cit, pp 12-13.

13 <http://data.gov.uk/whoslobbying>

14 <http://planning.nsw.gov.au/?tabid=508>

15 Independent Commission Against Corruption, “Investigation into Corruption Risks Involved in Lobbying” Sydney, ICAC, November 2010, p 54.

description and details (eg names and descriptions of specific legislative proposals, bills, regulations, policies, programs of interest and grants, contributions or contracts sought).¹⁶ A capacity should also exist for the regulators to demand further clarification of subject matter where existing provisions seeking specific information have not been met.¹⁷

1.54 Some argue that requiring this level of disclosure may inhibit frank exchange and that the disclosure of issues that are commercial-in-confidence may damage the interests of a lobbyist or client. Detailed minutes of meetings would however face existing, time limited, privacy and other legal protections.¹⁸ There is an option for initial disclosure to be more limited, while supplementary disclosure could be more detailed after legitimate privacy concerns have become less important. The Australian Greens believe, however, that those seeking to withhold disclosure should be required to show a legitimate reason to keep information from the public.

Enhance compliance and review

The Australian Greens support: the proposed Commissioner for Lobbying receiving and investigating complaints; strengthened and meaningful sanctions applying to MPs, public servants and lobbyists and proper appeal rights (see above).

1.55 The current scheme is toothless, relying on guidelines with no clear enforcement framework. The onus is on Government representatives to report breaches and the power to sanction, or remove a lobbyist from the Register, rests with the Secretary of the Department of Prime Minister and Cabinet. There are no appeal rights or independent scrutiny of the decision. The Canadian and US lobbying legislation provides for large fines and criminal penalties for those breaching the code.

1.56 The Australian Greens support a range of financial penalties as well as criminal penalties for serious offences which apply to third party and in-house lobbyists. Consideration should be given to the capacity of a new Office of the Commissioner of Lobbying to publicly name those breaching the scheme in parliament.

Strengthen post separation employment provisions

The Australian Greens believe there should be a five year ban on ex-ministers working as lobbyists.

16 Dr David Solomon, op cit, p 9.

17 Organisation for Economic Co-operation and Development, "Lobbyists, Government and Public Trust", p 70.

18 ICAC, op cit, pp 37-38.

1.57 The federal requirements lag behind jurisdictions like Queensland and South Australia which set the ban at two years. The revolving door provisions in Canada and the US are much stronger than in Australia. For example in Canada ‘Designated Public Office Holders’ (all MPs and Senators, their staff, very senior executives) face a ban of five years after leaving their positions, but the Lobbying Commissioner can exempt certain individuals (eg students employed in a Minister’s office) and it does not stop individuals from working for non-profit organisations as long as their duties do not require them to lobby the government, or working for corporations if lobbying the federal government is not one of their main duties.

Ban success fees

The Australian Greens support a ban on the payment of success fees to lobbyists.

1.58 This will minimise the incentive created for lobbyists to use corrupt methods to achieve an outcome that will attract a bonus fee. Canada and the US prohibit lobbyists from receiving any payment that is in whole or in part contingent on the outcome of their lobbying. NSW and Queensland have both made it a criminal offence to pay or receive a success fee for lobbying.¹⁹

Senator Lee Rhiannon

19 The ban in Queensland came after a former QLD and Federal government minister were paid \$500,000 for successfully lobbying to win a contract to build the Brisbane Airport Link tunnel.

APPENDIX 1

Submissions and Additional Information received by the Committee

Submissions

- 1 Dr Bob Such MP
- 2 Profile Management Consultants
- 3 Action on Smoking and Health (ASH) Australia
- 4 Hawker Britton
- 5 NSW Greens Political Donations Research Project
- 6 Government Relations Professionals Association Incorporated
- 7 Queensland Integrity Commissioner
- 8 Accountability Round Table
- 9 Kreab Gavin Anderson (KGA)
- 10 Government Relations Australia (GRA)
- 11 Australian Council on Smoking and Health
- 12 Public Relations Institute of Australia (PRIA)
- 13 McCusker Centre for Action on Alcohol and Youth
- 14 Mr Guy Barnett
- 15 Mr Michael Ahrens
- 16 Department of the Prime Minister and Cabinet
- 17 Australian Greens

Additional Information Received

Joshua Bee, Australia's Transparency Deficit: Reforming Federal Lobbying Regulation, October 2011, provided 26 January 2012

Answers to Questions on Notice

The Department of the Prime Minister and Cabinet: Answer to a Question on Notice, public hearing held on 21 February 2012, provided on 23 February 2012

APPENDIX 2

Public Hearing

Tuesday, 21 February 2012

Committee Room 2S3, Parliament House, Canberra

Witnesses

Department of the Prime Minister and Cabinet

Ms Philippa Lynch, First Assistant Secretary, Government Division

Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch

Government Relations Australia (GRA)

Mr Les Timar, Managing Director

Queensland Integrity Commissioner

Dr David Solomon, Integrity Commissioner

APPENDIX 3

Lobbying Code of Conduct

1. PREAMBLE

- 1.1 Respect for the institutions of Government depends to a large extent on public confidence in the integrity of Ministers, their staff and senior Government officials.
- 1.2 Lobbying is a legitimate activity and an important part of the democratic process. Lobbyists can help individuals and organisations communicate their views on matters of public interest to the Government and, in doing so, improve outcomes for the individual and the community as a whole.
- 1.3 In performing this role, there is a public expectation that lobbying activities will be carried out ethically and transparently, and that Government representatives who are approached by lobbyists can establish whose interests they represent so that informed judgments can be made about the outcome they are seeking to achieve.
- 1.4 The *Lobbying Code of Conduct* is intended to promote trust in the integrity of government processes and ensure that contact between lobbyists and Government representatives is conducted in accordance with public expectations of transparency, integrity and honesty. Lobbyists and Government representatives are expected to comply with the requirements of the *Lobbying Code of Conduct* in accordance with their spirit, intention and purpose.

2. APPLICATION

- 2.1 The *Lobbying Code of Conduct* applies in conjunction with the Australian Government *Standards of Ministerial Ethics* and other relevant codes.
- 2.2 The *Lobbying Code of Conduct* creates no obligation on the part of a Government representative to have contact with a particular lobbyist or lobbyists in general.
- 2.3 The *Lobbying Code of Conduct* does not operate to restrict contact with Government representatives where the law requires a Government representative to take account of the views advanced by a person who may be a lobbyist.

3. DEFINITIONS

- 3.1 “Client”, in relation to a lobbyist, means an individual, association, organisation or business who:
 - (a) has engaged the lobbyist on a retainer to make representations to Government representatives; or
 - (b) has, in the previous three months, engaged the lobbyist to make representations to Government representatives, whether paid or unpaid.
- 3.2 “Communications with a Government representative” includes oral, written and electronic communications.
- 3.3 “Government representative” means a Minister, a Parliamentary Secretary, a person employed or engaged by a Minister or a Parliamentary Secretary under the *Members of Parliament (Staff) Act 1984*, an Agency Head or a person employed under the *Public Service Act 1999*, a person engaged as a contractor or consultant by an Australian Government

agency whose staff are employed under the *Public Service Act 1999* or a member of the Australian Defence Force.

- 3.4 “Lobbying activities” means communications with a Government representative in an effort to influence Government decision-making, including the making or amendment of legislation, the development or amendment of a Government policy or program, the awarding of a Government contract or grant or the allocation of funding, but does not include:
- (a) communications with a committee of the Parliament;
 - (b) communications with a Minister or Parliamentary Secretary in his or her capacity as a local Member or Senator in relation to non-ministerial responsibilities;
 - (c) communications in response to a call for submissions;
 - (d) petitions or communications of a grassroots campaign nature in an attempt to influence a Government policy or decision;
 - (e) communications in response to a request for tender;
 - (f) statements made in a public forum; or
 - (g) responses to requests by Government representatives for information.
- 3.5 “Lobbyist” means any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client, but does not include:
- (a) charitable, religious and other organisations or funds that are endorsed as deductible gift recipients;
 - (b) non-profit associations or organisations constituted to represent the interests of their members that are not endorsed as deductible gift recipients;
 - (c) individuals making representations on behalf of relatives or friends about their personal affairs;
 - (d) members of trade delegations visiting Australia;
 - (e) persons who are registered under an Australian Government scheme regulating the activities of members of that profession, such as registered tax agents, Customs brokers, company auditors and liquidators, provided that their dealings with Government representatives are part of the normal day to day work of people in that profession; and
 - (f) members of professions, such as doctors, lawyers or accountants, and other service providers, who make occasional representations to Government on behalf of others in a way that is incidental to the provision to them of their professional or other services. However, if a significant or regular part of the services offered by a person employed or engaged by a firm of lawyers, doctors, accountants or other service providers involves lobbying activities on behalf of clients of that firm, the firm and the person offering those services must register and identify the clients for whom they carry out lobbying activities.

For the avoidance of doubt, this Code does not apply to any person, company or organisation, or the employees of such company or organisation, engaging in lobbying activities on their own behalf rather than for a client, and does not require any such person, company or organisation to be recorded in the Register of Lobbyists unless that person, company or organisation or its employees also engage in lobbying activities on behalf of a client or clients.

3.6 "Lobbyist's details" means the information described under clause 5.1.

3.7 "Secretary" means the Secretary of the Department of the Prime Minister and Cabinet.

4. NO CONTACT BETWEEN GOVERNMENT REPRESENTATIVES AND UNREGISTERED LOBBYISTS

4.1 A Government representative shall not knowingly and intentionally be a party to lobbying activities by:

- (a) a lobbyist who is not on the Register of Lobbyists
- (b) an employee of a lobbyist, or a contractor or person engaged by a lobbyist to carry out lobbying activities whose name does not appear in the lobbyist's details noted on the Register of Lobbyists in connection with the lobbyist, or
- (c) a lobbyist or an employee of a lobbyist, or a contractor or person engaged by a lobbyist to carry out lobbying activities who, in the opinion of the Government representative, has failed to observe any of the requirements of clause 8.1(e).

5. REGISTER OF LOBBYISTS

5.1 There shall be a Register of Lobbyists that shall contain the following information:

- (a) in the case of a person, company or organisation who conducts lobbying activities, or whose employees conduct lobbying activities on behalf of a client with a Government representative:
 - (i) the business registration details, including trading names, of the lobbyist including, where the business is not a publicly listed company, the names of owners, partners or major shareholders, as applicable;
 - (ii) the names and positions of persons employed, contracted or otherwise engaged by the lobbyist to carry out lobbying activities,
 - (iii) whether a person referred to in clause 5.1(a)(ii) above is a former government representative (as defined in clause 3.4), and if so, the date the person became a former government representative; and
 - (iv) subject to clause 5.2, the names of clients on whose behalf the lobbyist conducts lobbying activities.

5.2 A lobbyist is not required to list a body corporate as a client on the Register if disclosure of the lobbyist's relationship with the body corporate might result in speculation about a pending transaction involving the body corporate and that transaction has not previously been disclosed by the body corporate in accordance with its continuous disclosure obligations under Chapter 6CA of the *Corporations Act 2001*. Where the lobbyist relies on this clause, they must advise any Government representative they are lobbying of such reliance and also

the anticipated date when they will add their client to the Register and the Lobbyist must add the name of their client to the Register promptly once the market sensitivity has passed.

- 5.3 A lobbyist wishing to conduct lobbying activities with a Government representative must apply to the Secretary to have his or her lobbyist's details recorded in the Register of Lobbyists.
- 5.4 The lobbyist shall submit updated lobbyist's details to the Secretary in the event of any change to the lobbyist's details as soon as practicable and within 10 business days after the change occurs.
- 5.5 The lobbyist shall provide to the Secretary within 10 business days of, 31 January of each year, confirmation that the lobbyist's details are up to date.
- 5.6 The lobbyist shall provide to the Secretary, within 10 business days of 30 June 2009 and each year thereafter, confirmation that the lobbyist's details are up to date together with statutory declarations for all persons employed, contracted or otherwise engaged by the lobbyist to carry out lobbying activities on behalf of a client, as required under paragraph 10.1.
- 5.7 The registration of a lobbyist shall lapse if the confirmations and updated statutory declarations are not provided to the Secretary within the time frames specified in clauses 5.5 and 5.6.

6. ACCESS TO THE REGISTER OF LOBBYISTS

- 6.1 The Register of Lobbyists shall be a public document that is published on the website of the Department of the Prime Minister and Cabinet.

7. PROHIBITION ON LOBBYING ACTIVITIES

- 7.1 Persons who, after 6 December 2007, retire from office as a Minister or a Parliamentary Secretary, shall not, for a period of 18 months after they cease to hold office, engage in lobbying activities relating to any matter that they had official dealings with in their last 18 months in office.
- 7.2 Persons who were, after 1 July 2008, employed in the Offices of Ministers or Parliamentary Secretaries under the *Members of Parliament (Staff) Act 1984* at Adviser level and above, members of the Australian Defence Force at Colonel level or above (or equivalent), and Agency Heads or persons employed under the *Public Service Act 1999* in the Senior Executive Service (or equivalent), shall not, for a period of 12 months after they cease their employment, engage in lobbying activities relating to any matter that they had official dealings with in their last 12 months of employment.

8. PRINCIPLES OF ENGAGEMENT WITH GOVERNMENT REPRESENTATIVES

- 8.1 Lobbyists shall observe the following principles when engaging with Government representatives:
 - (a) lobbyists shall not engage in any conduct that is corrupt, dishonest or illegal, or unlawfully cause or threaten any detriment;

- (b) lobbyists shall use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided by them to clients whom they represent, the wider public and Government representatives;
- (c) lobbyists shall not make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to Government representatives, members of political parties or to any other person;
- (d) lobbyists shall keep strictly separate from their duties and activities as lobbyists any personal activity or involvement on behalf of a political party; and
- (e) when making initial contact with Government representatives with the intention of conducting lobbying activities, lobbyists who are proposing to conduct lobbying activities on behalf of clients must inform the Government representatives:
 - (i) that they are lobbyists or employees of, or contractors or persons engaged by, lobbyists;
 - (ii) whether they are currently listed on the Register of Lobbyists;
 - (iii) the name of their relevant client or clients, including a client whose identity is not required to be made public under clause 5.2; and
 - (iv) the nature of the matters that their clients wish them to raise with Government representatives.

9. REPORTING BREACHES OF THE CODE

- 9.1 A Government representative who becomes aware of a breach of this Code by a lobbyist shall report details of the breach to the Secretary.

10. REGISTRATION

- 10.1 The Secretary shall not include on the Register the name of an individual unless the individual provides a statutory declaration to the effect that he or she:

- (a) has never been sentenced to a term of imprisonment of 30 months or more; and
- (b) has not been convicted, as an adult, in the last ten years, of an offence, one element of which involves dishonesty, such as theft or fraud.

- 10.2 The Secretary may remove a lobbyist or a person who is an employee of a lobbyist, or a contractor or person engaged by a lobbyist from the Register of Lobbyists if, in the opinion of the Secretary:

- (a) the conduct of the lobbyist or of the employee, the contractor or person engaged by the lobbyist to provide lobbying services for the lobbyist has contravened any of the terms of this Code;
- (b) the registration details of the lobbyist are inaccurate;
- (c) the lobbyist fails to answer questions within a reasonable period of time relating to the lobbyist's details on the Register or the lobbyist's lobbying activities (in particular questions relating to allegations of breaches of the Code) or provides inaccurate information in response to those questions; or

- (d) the registration details have not been confirmed in accordance with the requirements of clauses 5.5 and 5.6.
- 10.3 The Secretary shall not remove a lobbyist or a person who is an employee of a lobbyist, or a contractor or person engaged by the lobbyist from the Register under clause 10.2, unless the Secretary has advised the lobbyist or the individual concerned of the reasons why he or she proposes to remove the lobbyist or individual concerned from the Register and given the lobbyist or individual concerned an opportunity to state why the proposed course of action should not be followed.
- 10.4 The Secretary:
- (a) must not register a lobbyist, a person who is an employee of a lobbyist or a contractor or person engaged by a lobbyist if the Special Minister of State for the Public Service and Integrity, in his or her absolute discretion, directs the Secretary not to register the lobbyist or the individual; and
 - (b) must remove from the Register a lobbyist or a person who is an employee of a lobbyist or a contractor or person engaged by a lobbyist from the Register if the Special Minister of State for the Public Service and Integrity, in his or her absolute discretion, directs the Secretary to remove the lobbyist or the individual from the Register.
- 10.5 The Special Minister of State for the Public Service and Integrity shall not issue a direction under clause 10.4 to the Secretary unless the Special Minister of State for the Public Service and Integrity has advised the lobbyist or the individual concerned of the reasons why he or she proposes to issue the direction and given the lobbyist or the individual concerned an opportunity to state why the direction should not be issued.