



Australian Government
Attorney-General's Department

Submission to the inquiry into access to Australian Parliament House by lobbyists

Senate Finance and Public Administration References Committee



Contents

Introduction	3
The Lobbying Code of Conduct	3
Purpose of the Code	3
Overview of the Code	4
Obligations on lobbyists.....	4
Obligations on Government representatives	6
Comparison with other lobbying frameworks	6
Information on the Lobbyist Register	6
The Register	6
Key Performance Indicators.....	7
Registration statistics.....	7
The Code's implementation	8
Administration of the Code.....	8
Outreach	8
Compliance	9
Sufficiency of the Code	10
Effectiveness of the Code	10
Reviews relevant to the Code	11
Interaction with the Private Access Area Policy	11



Introduction

The Attorney-General's Department (the department) welcomes the opportunity to make a submission to the inquiry by the Senate Finance and Public Administration References Committee into access to Australian Parliament House by lobbyists and the adequacy of current transparency arrangements relating to the lobbyist register.

The department administers the [Lobbying Code of Conduct](#) (Code) and the [Australian Government Register of Lobbyists](#) (Register). Responsibility for the Code and the Register transferred from the Department of Prime Minister and Cabinet to the department in May 2019. This submission provides information relevant to paragraph (a) of the inquiry's terms of reference regarding the adequacy of the transparency arrangements relating to the lobbyist register including:

- an overview of the Code and its purpose
- information about what is published on the Register, and
- information about the department's experience administering the Code and its transparency value.

This submission does not provide information on the sponsored pass system and access to Australian Parliament House, as these are matters administered by the Department of Parliamentary Services.

The Lobbying Code of Conduct

Purpose of the Code

Lobbying is a legitimate and 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.

However, it is important to ensure lobbying activities are carried out ethically and transparently. Government representatives who are approached by lobbyists need to be able to establish whose interests they represent so that informed judgments can be made about the outcome the lobbyists are seeking to achieve.

The Code promotes trust in the integrity of government processes and ensures that contact between third-party lobbyists and Government representatives is conducted in accordance with public expectations of transparency, integrity and honesty. It does this by:

- requiring the department to establish and maintain the public Register listing details of lobbyists who act on behalf of clients (third-party lobbyists) and details about their clients (section 7 and 8 of the Code)
- imposing eligibility requirements for registration on third-party lobbyists (section 10 of the Code)



- requiring third-party lobbyists to:
 - register their details and their clients prior to engaging in lobbying activities with Government representatives (section 7 of the Code)
 - disclose whose interests they are representing when making initial contact with Government representatives (paragraph 12(e) of the Code)
 - abide by certain standards of conduct set out in the principles of engagement (section 12 of the Code), and
- prohibiting Government representatives from engaging with unregistered third-party lobbyists, and requiring Government representatives who become aware of a breach of the Code to report details of the breach to the department (section 6 of the Code).

Overview of the Code

Obligations on lobbyists

Who is a lobbyist?

The Code provides that a 'lobbyist' is any person, company or organisation who conducts lobbying activities on behalf of a third-party client or whose employees, contractors or persons otherwise engaged by the person, company or organisation conduct lobbying activities on behalf of a third-party client.

The Code does not apply to lobbyists who undertake lobbying activities on behalf of their employer (in-house lobbyists). These representations are sufficiently transparent as it is clear whose interests in-house lobbyists represent. Subsection 5(3) of the Code also excludes a number of other persons and organisations from registration requirements including charitable and religious organisations, members of visiting trade delegations and persons making representations on behalf of relatives about their personal affairs.

The Code imposes eligibility requirements prohibiting some persons from being registered as a third-party lobbyist. This seeks to ensure that third-party lobbyists who wish to engage with Government representatives:

- can be relied upon to observe the standards of behaviour and requirements set out in the Code, and
- do not erode public trust in the integrity of government processes or diminish public confidence in Government's regulation of lobbying activities at the federal level.

Registered lobbyists are required to complete a statutory declaration as part of their initial application for registration, and thereafter annually, declaring that they:

- have not been sentenced to a term of imprisonment of 30 months or more
- have not been convicted in the past 10 years of a dishonesty offence
- are not a member of a state or federal political party executive, state executive or administrative committee, and



- have not previously committed a serious breach of the Code, that is, engaging in unregistered lobbying, or failing to comply with the principles of engagement.

Section 11 of the *Statutory Declaration Act 1959* provides that it is an offence to intentionally make a false statement in a statutory declaration. This offence carries a penalty of imprisonment for four years.

Registration requirements

The Code requires that any person who acts on behalf of third-party clients for the purpose of lobbying Australian Government representatives must be listed on the Register.

Lobbying activities are communications with a Government representative in an effort to influence Government decision-making. This includes the awarding of a government contract or grant, the making or amendment of legislation, the development or amendment of a government policy or program and the allocation of funding.

The term 'Government representative' is defined in section 5 of the Code to include Ministers and Assistant Ministers and their staff, an agency head or person employed under the *Public Service Act 1999* (PS Act), contractors and consultants engaged by Australian Government departments and agencies, and Australian Defence Force members.

Principles of engagement

In addition to the requirement to register, lobbyists are also required to observe the following five principles of engagement.

1. When making initial contact with a Government representative, lobbyists must make clear that they are a registered lobbyist representing a client, the reason for the meeting and, if applicable, that they are a former Australian Government representative.
2. Lobbyists must not engage in any conduct that is corrupt, dishonest or illegal.
3. Lobbyists must use all reasonable endeavours to satisfy themselves of the truth and accuracy of statements and information provided by them to their clients, the wider public and Government representatives.
4. Lobbyists must not make misleading or exaggerated claims about the nature or extent of their access to Government representatives, members of political parties or to any other person.
5. Lobbyists must keep strictly separate any personal activity or involvement on behalf of a political party from their lobbying activities.

Prohibitions on former Government representatives who are lobbyists

While the movement of individuals between positions in the public sector and the private sector can bring benefits, it can also create some integrity risks. Noting this, the Code also requires that former Government representatives who are lobbyists refrain from undertaking lobbying activities on matters related to their former positions for certain periods of time.

The Code prohibits former Ministers and Assistant Ministers from engaging in lobbying activities relating to any matter they had official dealings with in their last 18 months in office, for a period of 18 months after they cease to hold office. The Code also prohibits Ministerial advisors, members of



the Australian Defence Force at Colonel-level and above, and agency heads and Senior Executive Service level public servants from engaging in lobbying activities relating to any matter that they had official dealings with in their last 12 months of employment, for a period of 12 months after they cease employment.

Obligations on Government representatives

The Code sets out two key obligations for Government representatives. It prohibits Government representatives from knowingly and intentionally engaging in lobbying activities with unregistered lobbyists or lobbyists who, in the opinion of the Government representative, have failed to observe the principles of engagement. The Code also requires Government representatives to report breaches of the Code to the department. This is an important compliance tool as it ensures that the department is notified of potential breaches, and can then investigate and take appropriate action.

Comparison with other lobbying frameworks

All Australian states and territories regulate lobbying, with the exception of the Northern Territory, but approaches in each jurisdiction differ. Of the seven state and territory jurisdictions with lobbying frameworks, four have legislative frameworks (New South Wales (NSW), Queensland (Qld), South Australia (SA) and Western Australia) and three rely on non-legislative codes (Victoria (Vic), Tasmania and the Australian Capital Territory). Most jurisdictions do not regulate in-house lobbyists. NSW is the only jurisdiction that regulates in-house lobbyists' conduct, but it does not require them to register. Vic is the only jurisdiction that imposes registration requirements on in-house lobbyists, but only on those who have held specified roles in government or a political party. All jurisdictions impose prohibition periods on former Government representatives who are lobbyists. These periods range from 12-18 months, with the exception of Qld and SA, which impose longer prohibition periods of 1-2 years. The table at **Attachment A** provides a comparison of Australia's domestic lobbying frameworks.

Internationally, both the United Kingdom (UK) and the United States (US) have legislative frameworks to regulate lobbying. The UK does not regulate in-house lobbyists. The US does regulate in-house lobbyists, but only so as to require registration where certain income and expense thresholds are met. The table at **Attachment B** provides a comparison of the UK and US lobbying frameworks.

Information on the Lobbyist Register

The Register

Section 7 of the Code requires the department to establish and maintain the Register and requires the Register to contain certain information about lobbyists. The Register is the key transparency mechanism that provides both the public and Government representatives with visibility of who is undertaking third-party lobbying, the nature of these lobbyists' previous Government positions, and the clients that they are representing. This information allows Government representatives to make informed decisions when engaging with a lobbyist and allows Government Representatives to verify



information and ensure lobbyists are complying with the Code before engaging in any lobbying activity.

The Register includes the following information for each lobbyist:

- the lobbyist organisation's entity name, trading name and ABN (if applicable)
- the lobbyist organisation's owners, partners or major shareholders
- the date on which the lobbyist organisation was registered
- the name and position of each person employed, contracted or engaged by the lobbyist organisation to conduct lobbying activities and the date on which they were registered
 - if the person is a former government representative, the title of their most recent position as a Government representative and the date they became a former Government representative
- the name of each client on whose behalf the lobbyist conducts lobbying activities, the client's ABN and the date the client was registered, and
- historical data for each lobbyist organisation to May 2020, for example former clients and former lobbyists and the date on which those clients or lobbyists were deregistered.

The Register also includes information about lobbyists organisations who are no longer conducting lobbying activities and have been deregistered.

Key Performance Indicators

Maintaining the currency of the Register ensures that Government representatives have the ability to make informed decisions about lobbying activities and is consistent with the Code's intent of ensuring lobbying is conducted in accordance with public expectations of transparency, integrity and honesty. To ensure the Register is up to date, the Code requires lobbyists to update their registration details in the event of any change as soon as practicable and within 10 business days after the change occurs.

The department also has performance measures which ensure that the public register is up to date, indicated by greater than 85% of new registrations being published within three weeks, and greater than 85% of updates being published within five working days. In the 2022-23 financial year, the department published new registrations within three weeks 100% of the time, and published updates within five working days 98% of the time. These performance measures are published each year in the department's annual report.

Registration statistics

The Register also provides the public with a broad overview of lobbying at the federal level. It does this by providing a number of real time statistics, including:

- the number of lobbyist organisations, individual lobbyists and clients currently registered
- the number of new lobbying organisations published during the year, and the past three years
- the percentage of lobbyists who are former Government representatives, and
- the top ten largest lobbying organisations, based on the number of clients registered.



The Code's implementation

Administration of the Code

The department is responsible for administering the Code and is responsible for the day-to-day operation of the Register. This involves a number of functions:

- Establishing and maintaining the IT system to manage registrations on the Register.
 - Lobbyists access a user portal to submit applications for registration, edit their details on an ongoing basis, and participate in reporting periods.
 - Information submitted through the user portal is reviewed by the department and requires approval for publication on the Register. For example, the department reviews all lobbyist applications to confirm eligibility requirements and identify any issues that might affect a person's registration.
- Establishing and maintaining a dedicated inbox and helpline to provide information about the application of the Code, assist lobbyists with their registrations, and receiving reports of potential breaches of the Code.
 - The department responds to enquires received via email and the helpline, which operates Monday to Friday.
- Conducting outreach and education activities to build greater awareness and understanding of the Code amongst the general public, lobbyists and Government representatives.
- Conducting compliance activities and providing advice to the Secretary and the Attorney-General on the use of their enforcement powers under the Code.
- Collaborating with other agencies and departments to share information and ensure the Code effectively complements other Government integrity and transparency frameworks.

Outreach

Education and outreach are key to ensuring lobbyists and Government representatives are aware of, and comply with, their obligations under the Code. The department conducts a number of outreach activities to build greater understanding of the Code across Government, for example:

- the Attorney-General writing to Ministers and Assistant Ministers about the Code at the beginning of each Parliamentary term, and following an appointment during a Parliamentary term
- the Secretary writing annually to agency heads and portfolio agency heads reminding them of their obligations under the Code and requesting that they distribute guidance material to staff
- engaging with the Department of Finance and the Australian Public Service Commission to embed material on the Code in relevant training packages, induction and severance materials, and in newsletters and government websites, and
- presenting to other government departments on the application of the Code to Government representatives and providing tailored guidance material.



The department also conducts industry-specific outreach and engagement. For example, the department:

- regularly meets with the Australian Professional Government Relations Association (APGRA) to build and maintain awareness of the Code among their membership and publishes information about the Code in APGRA's newsletters
- develops public-facing fact sheets to assist lobbyists in understanding their obligations under the Code and support compliance, and
- engages regularly with lobbyists through the dedicated lobbyists helpline and inbox.

Compliance

The department takes a proactive approach to administering the Code and investigating instances of potential non-compliance. The department undertakes a range of activities to identify potential non-compliance, for example:

- engaging with Government representatives to ensure they are aware of their obligation to report breaches of the Code to the department
- maintaining an online reporting tool and dedicated inbox, through which any member of the public may report a suspected breach of the Code
- monitoring media reporting for potential compliance issues, and
- cross-checking registrations under the Foreign Influence Transparency Scheme with registrations under the Code, to identify any potential omissions.

There has been an increase in the number of breach reports over the past few years, with the following reports made:

- in 2021, the department received two reports of potential breaches of the Code
- in 2022, the department received ten reports of potential breaches of the Code, and
- in 2023, the department received sixteen reports of potential breaches of the Code.

Where the department becomes aware of specific cases where obligations under the Code may apply, the department will undertake an investigation. The department's approach will vary depending on the circumstances of each case, however the department may:

- initiate contact with the person to ensure they are aware of the operation of the Code, to request information about certain activities or conduct, or to invite the person to consider whether they need to register, or
- initiate contact with other relevant parties to request information.

If a breach has occurred, in the vast majority of cases it is resolved through cooperative engagement with the lobbyist. However, the Code provides a number of compliance mechanisms in the event that voluntary compliance is not achieved. For example, the Code enables the Secretary to:

- not register (or re-register) a person who has committed a serious breach of the Code for a period of up to 3 months, and



- remove a registered lobbyist from the Register if they fail to comply with their obligations under the Code or fail to answer questions within a reasonable period of time.

The Code also provides the Attorney-General with an absolute discretion to direct the Secretary to refuse a person's application to register as a lobbyist, and to direct the Secretary to deregister a lobbyist.

The consequence of exercising these powers is that Government representatives cannot be a party to lobbying with unregistered lobbyists. This has the practical effect of preventing those individuals from engaging in lobbying, with flow-on financial consequences.

The Code sits within a broader integrity and transparency framework, such as the Code of Conduct for Ministers, the PS Act, the Australian Public Service (APS) Employment Principles, the *Public Governance, Performance and Accountability Act 2013*, the *Foreign Influence Transparency Scheme Act 2018* (FITS Act) (which also regulates lobbying activities), and the National Anti-Corruption Commission. Although the Code is administrative in nature, it applies in conjunction with these other Australian codes and laws. For example, a breach of the Code may also constitute a breach of the APS Code of Conduct and the PS Act which may result in disciplinary or other employment-related sanctions for Government representatives.

Sufficiency of the Code

Effectiveness of the Code

The Code and the Register have contributed to building greater awareness of federal lobbying in Australia. This is indicated by public engagement with the Code and the Register, including through the lobbying helpline and inbox. The department's web analytics report that the department's webpages relating to the Code and the Register have had a total of 111,096 page views with 40,555 users from 1 May 2019 to 31 January 2024.

The Register has also provided Government representatives and the public with visibility of third-party lobbyists and the interests they represent. As at 31 January 2024, the details of 346 lobbyist organisations are listed on the Register, with 695 registered lobbyists, representing 2374 clients. There has also been a steady increase in the number of registrations in recent years:

- in 2020, 43 new lobbying organisations registered
- in 2021, 54 new lobbying organisations registered
- in 2022, 72 new lobbying organisations registered, and
- in 2023, 80 new lobbying organisations registered.

The Code and the Register cast light on the third-party lobbyists and their clients who seek to influence federal Government decision-making, and, as such, achieves its purpose of bringing transparency to lobbying within the federal sphere.



Reviews relevant to the Code

In 2020, the Australian National Audit Office (ANAO) conducted a review of the Code and recommended the department evaluate its sufficiency and provide advice to Government. The department conducted an evaluation and advised Government in 2021 that it considered the Code broadly achieved its purpose of promoting the transparency of third-party lobbying activities. It also noted that there were opportunities for enhancements to the administration and operation of the Code, including to reduce risks of non-compliance.

Amendments to the Code were made and took effect on 28 February 2022 to enhance the Code's transparency objective and its practical operation by:

- allowing the Secretary to decide not to register or re-register a lobbyist who has committed a serious breach of the Code on or after 28 February 2022, for a period of up to three months
- strengthening disclosure requirements for former Government representatives by requiring former Government representatives:
 - to provide the title of their most recent Government position for inclusion on the Register
 - that are subject to a temporary prohibition on conducting lobbying activities related to their former role, to provide information about that previous role and confirm they meet their prohibition period obligations when making initial contact with Government representatives;
- requiring lobbyists to declare they have not breached key parts of the Code in their annual statutory declaration, and introduce a continuous disclosure requirement if matters they have declared materially change, and
- restructuring and simplifying the presentation of the Code.

The Parliamentary Joint Committee on Intelligence and Security (PJICIS) is currently reviewing the FITS Act, which also regulates lobbying activities. The department will consider the PJICIS report and any recommendations it may make which are relevant to lobbying activities, and will provide further advice to Government.

Interaction with the Private Access Area Policy

The Private Access Area Policy (PAAP) outlines the arrangements in place for access to the private areas of Australian Parliament House (APH), including eligibility requirements for sponsored access cards. The PAAP is approved by the Presiding Officers who have responsibility for the control and management of the parliamentary precincts.

The Code does not currently interact with the arrangements set out in the PAAP for managing access to APH. The department is open to exploring options to enhance the interoperability of these frameworks, in particular avenues to facilitate information sharing:

- for the purpose of improving compliance with the Code, and



Australian Government
Attorney-General's Department

- to provide Parliament with information about a person's compliance with the Code which could inform decisions about their eligibility to hold a sponsored access card.

Attachment A – Comparison of jurisdictional lobbying frameworks

	Cth	ACT	VIC	NSW	WA	QLD	SA	TAS
Legislated	No	No	No	Yes	Yes	Yes	Yes	No
Administrative responsibility	AGD	Legislative Assembly	Public Sector Commission	Electoral Commission	Public Service Commission	Integrity Commission	Department of Premier & Cabinet	Department of Premier & Cabinet
Lobbyists regulated	Third party lobbyists	Third party lobbyists	Third party lobbyists, and in-house lobbyists who have held specified roles in government or a political party	Any individual or body who lobbies Government officials. However, only third party lobbyists subject to registration requirements.	Third party lobbyists	Third party lobbyists	Third party lobbyists	Third party lobbyists
Requirement to publish Ministerial diaries	No	Yes	No	Yes	No	Yes	No	No
Prohibition periods for former Government representatives	Yes – Ministers 18 months, advisers and senior officials 12 months	Yes – Ministers 18 months, senior officials and ministerial staff 12 months	Yes – Ministers and Cabinet Secretaries 18 months, Parliamentary Secretaries and senior officials 12 months	Yes – Ministers and Parliamentary Secretaries 18 months	No	Yes – senior government representatives and former opposition representative 24 months	Yes – Ministers 24 months, senior officials and advisers 12 months	Yes – Ministers, Parliamentary Secretaries and agency heads
Enforcement	- Deregistration - Bar registration/re-registration	- Deregistration	- Deregistration	- Information gathering powers - Deregistration /suspend registrations - 'Watch List' - Fines	- Deregistration - Suspend registration - Fines	- Deregistration - Suspend registration - Fines	- Deregistration - Bar registration - Fines and imprisonment	- Deregistration

Note: Northern Territory does not regulate lobbying.

Attachment B – Comparison of Australia, United Kingdom and United States’ lobbying frameworks

	Australia	United Kingdom	United States
Framework	Lobbying Code of Conduct	<i>Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014</i>	<i>Lobbying Disclosure Act of 1995 (2 U.S.C. §1601)</i>
Administered by	Attorney-General’s Department	Registrar of Consultant Lobbyists	Clerk of the House of Representatives and Secretary of the Senate
Coverage	Third-party lobbying of Ministers, ministerial staff and government officials	Third-party (‘consultant’) lobbying of Ministers and permanent secretaries	In-house and third-party lobbying of covered. Executive and Legislative Branch officials (subject to minimum contact, income and expense thresholds)
Registration obligations	Continuous—the Code requires lobbyists to register clients before meeting with Government representatives, and within 10 business days. Semi-annual reporting requirements also apply	Quarterly	Continuous – lobbyists are required to register within 45 days of making a lobbying contact or being employed to make a lobbying contact. Quarterly reporting requirements also apply
Powers to bar lobbyists	<p>The Secretary may:</p> <ul style="list-style-type: none"> • deregister lobbyists who breach the Code, and • bar lobbyists who commit serious breaches of the Code from registering for up to three months. <p>The Attorney-General may, at their absolute discretion, direct that a person not be registered as a lobbyist</p>		
Penalties	N/A	Civil penalties and fines	Fines and imprisonment