

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Additional Estimates 13-16 Feb 2012

Prime Minister and Cabinet Portfolio

Department/Agency: Department of the Prime Minister and Cabinet

Outcome/Program: 1.1.4 Support Services for Government Operations

Topic: Review of the lobbyist scheme

Senator: Senator Rhiannon

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Question:

Your dept has stated in the past that the lobbying scheme is constantly under review and that justifies a position of the Minister that a review of the scheme was not necessary.

1. Why was a report never issued after submissions were received to the July 2010 discussion paper put out by Minister Ludwig and why were submissions not publicly released?

In October Senate Estimates a representative of PM&C argued the code was effective because there had only one reported breach?

2. Are breaches the only criterion against which you measure the effectiveness of the scheme?
3. Do you measure the Australian against the framework the OECD has provided for the regulation of lobbying, considering Australia is a party to the OECD?
4. Is it of concern that the Commonwealth lobbyist scheme does not comply with OECD principles, which state, for example:

“Where **transparency and integrity** are the principal goals of legislation, effectiveness is best achieved if definitions are broad and inclusive, and the theatre of lobby activities is also defined broadly and inclusively.”?

Academics have described the Code as ‘timid and narrow. The exclusions...are very serious.’

5. Does your office consider it has a responsibility to identify and recommend to government where there are deficiencies in the code which are widely recognised, eg the code:
 - Excludes in-house lobbyists and lobbying directed at any MP

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- Fails to require the timely disclosure of the subject matter of lobbying
- Lacks effective sanctions

Providing a legislative framework

As you know, the current scheme is not provided for by legislation, while Canada, WA, QLD and NSW have taken this step. One argument put against a legislative structure, by Mr Harry Evans former Clerk of the Senate, is 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. However it is clear that this freedom is by no means absolute.

6. Considering this, have you sought any formal legal advice beyond advice provided by Mr Evans in a submission to the 2008 inquiry into the lobbyist scheme.
7. If not, why not?

Enforcement

8. Do you experience any frustrations in not having auditing or investigative powers or a mandate to properly enforce the scheme?

Scope

9. Do you receive any representations from the public, lobbying industry or academics asking that you broaden the scope of the lobbying scheme, for example widen who is defined as a lobbyist or expand who is the subject of lobbying?

Disclosure

The current lobbyist register does not detail when lobbying occurred, who stood to benefit, who was lobbied or what the subject of the lobbying or the meeting outcome. In contrast, in Canada lobbyists are required to submit monthly communication reports which include these kind of details.

10. Considering that the Prime Minister Gillard on gaining office said,

“People do want to see us more open, more accountable, more transparent. I am going to be held to higher standards of accountability than any Prime Minister in the modern age. I'm well aware of that, and I'm going to focus on being up to that challenge”,

have you made any recommendations to the government that disclosure requirements in relation to lobbyists be made more generous?

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Answer:

1. The discussion paper issued by the former Cabinet Secretary, Senator the Hon Joe Ludwig on 15 July 2010, and the submissions received in relation to it, informed the decision announced by the Special Minister of State for the Public Service and Integrity, the Hon Gary Gray AO MP, on 1 August 2011. The Department gained permission to release 17 of the 22 submissions to the Senate Finance and Public Administration References Committee (the Committee) inquiry into the Code of Conduct (the Code) and Register of Lobbyists (Register). The 17 submissions are available on the Australian Parliament House website. The Department has not been given permission by the authors at this stage to release the remaining 5 submissions.
2. The number of breaches of the Code is one measure of its effectiveness. The Committee's recent inquiry into the Code and Register also provided an opportunity to examine the effectiveness of the Code and Register.
3. Consideration of the policy aspects of the Code and Register against international lobbying frameworks is a matter for the Australian Government.
4. The scope of the Code is a policy matter for the Australian Government.
5. The Department has responsibility for administering the Code and Register in line with Australian Government policy.
- 6.&7. The Department has not sought legal advice relating to a legislative structure for the Code and Register. The Department could, of course, seek legal advice if it was considered necessary.
8. The scope of the Code is a policy matter for the Australian Government.
9. The Department received a range of submissions on lobbying issues in response to the 2010 discussion paper process and 17 of these are attached to the Department's submission to the Committee inquiry, which is available on the Australian Parliament House website.
10. The Department provides a range of advice to relevant ministers. Consideration of policy is a matter for the Australian Government.