Chapter 2

Issues

Widespread support

2.1 The committee received evidence from a variety of organisations and individuals that generally welcomed the *Lobbying Code of Conduct* (the Code). The majority of evidence received included comments of support, which viewed the Code as a significant step towards increasing the level of transparency surrounding lobbying activities.[1] Typical of these was the following comment from Mr John O'Callaghan:

> …I welcome the Code. It will lead to improved transparency in dealings between lobbyists and the federal government, providing a higher level of confidence about the processes of government, including government policy making.[2]

2.2 Furthermore, Professor John Warhurst argued that 'lobbyists welcome the recognition and legitimacy that tends to follow such government attention'.[3]

2.3 The committee notes that increasing the focus on the activities of lobbyists is in the public interest, with many citizens either unaware or sceptical of the complexities involved in the relationship between lobbyists and parliamentary processes. The committee acknowledges and supports the general aim behind the Government's introduction of the Code:

> ...to promote trust in the integrity of government processes and ensure that contacts between lobbyists and Government representatives are conducted in accordance with public expectations of transparency, integrity and honesty.[4]

2.4 Notwithstanding the broad ranging support for the introduction of the Code, the committee heard evidence on a range of issues including the following items which are discussed below:

- whether the coverage of lobbyists is adequate;
- procedural fairness;
- regulatory burdens;

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1 See for example Mr Tim Grau, Managing Director, Springboard Australia, *Submission 1*, p. 1 and Mr Greg Sam, Joint Managing Director, Parker and Partners, *Submission 3*, p. 1.

2 Mr John O'Callaghan, *Submission 10*, p. 1.

3 Professor John Warhurst, *Submission 4*, p. 3.

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

- whether the coverage of parliamentarians is adequate; and
- post-employment prohibitions.

Coverage of lobbyists

2.5 The terms of reference required the committee to examine:

> ...whether the code should be confined to organisations representing clients, or should be extended to organisations which lobby on their own behalf, and the proposed exemptions are justified.[5]

2.6 The definition of 'lobbyist' lies at the heart of the Code, because this determines who will be affected by its application. At present, only third party lobbyists are covered. The definition reads:

> ...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...[6]

2.7 Notably, the definition excludes organisations that engage in lobbying activities on their own behalf rather than for a client. This exclusion covers many types of organisations, such as industry peak bodies and trade unions, which are well known for their engagement in lobbying activities. The express exclusions are:

- charitable, religious and other organisations or funds that are endorsed as deductible gift recipients;
- non-profit associations or organisations constituted to represent the interests of their members that are not endorsed as deductible gift recipients;
- individuals making representations on behalf of relatives or friends about their personal affairs;
- members of trade delegations visiting Australia;
- 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
- members of professions, such as doctors, lawyers or accountants, and other service providers, who make occasional representations to Government of behalf of others in a way that is incidental to the provision to them of their professional and other services...[7]

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5 *Journals of the Senate*, 14 May 2008, p. 389.

6 Department of the Prime Minister and Cabinet, *Lobbying Code of Conduct*, May 2008, p. 2.

7 Department of the Prime Minister and Cabinet, *Lobbying Code of Conduct*, May 2008, p. 2.

2.8 At the tabling of the Code, the Cabinet Secretary, Senator the Hon. John Faulkner explained the government's rationale:

> It does not apply to government relations staff employed in major companies or peak industry organisations as the very nature of their employment means that it will be clear to ministers and others whose interests they will be representing…[T]he 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.[8]

2.9 The committee heard evidence that the definition of 'lobbyist' should be expanded to reflect the diverse nature of organisations that have access and influence in making their views known in political decision making processes.

2.10 For example the committee heard evidence from Mr David Moore, proprietor of The Next Level Consulting Services, who submitted that:

> A key issue I have is with the widespread exemptions...that the overwhelming majority of the lobbying effort is actually left untouched...One is the exemption of industry bodies and trade unions, who, I think, exert considerable influence in the polity process of Australia these days, both financially and in terms of their intricate contact with the political process. I am also a bit concerned about the exemption of in-house lobbyists...quite often, we are dealing with the same people...it is not unusual for people to shift between being political staff, being lobbyists, being consultants, being in-house consultants in certain companies, and in and out of the trade union movement, in and out of associations. In effect we are quite often talking about the same class of people.[9]

2.11 Mr Moore summed up his position by stating that 'if we are going to [adopt a] framework, we should actually look to increasing the scope to include in-house lobbyists as well.'[10]

2.12 Another example of support for broadening the definition of lobbyist was put forward by Mr Tim Grau, Managing Director, Springboard Australia. Mr Grau raised 'grassroots' campaigning as an area neglected by the current Code, and submitted that:

> ...the current code that is being implemented would not prevent an organisation, be it a lobbying firm or otherwise...to take the next step, for example the organisation called GetUp which runs a grassroots campaign—

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8 Senator the Hon. John Faulkner, Cabinet Secretary, *Senate Hansard*, 13 May 2008, p. 1510.

9 Mr David Moore, Proprietor, The Next Level Consulting Services, *Committee Hansard*, 16 June 2008, p. 3.

10 Mr David Moore, Proprietor, The Next Level Consulting Services, *Committee Hansard*, 16 June 2008, p. 3.

> and some would argue that is has been quite successful—would not have to register under the current code. I think that organisations who are clearly involved in a lobbying exercise of some sort, be it grassroots or otherwise, and given the power now of the online lobbying that can be done, should be captured by the code.[11]

2.13 In contrast, Community and Public Sector Union (CPSU) National Secretary, Mr Stephen Jones submitted that, while he did not advocate the application of the Code to unions, if it were to apply it would not be overly burdensome.[12]

2.14 Similar sentiments were echoed by the Australian Chamber of Commerce and Industry (ACCI). ACCI representatives explained why they felt that the current Code struck the right balance with the organisations that are excluded from the definition of 'lobbyist'. Mr Daniel Mammone, Senior Advisor, Legal and Industrial told the committee that membership of ACCI:

> ...is based on articles of association, a company's constitution or a registered organisation's rules. Each member's purpose and interests are clear, transparent and public. In all cases, ministers and government representatives can at all times have the continuous satisfaction that they know who they are dealing with and on what basis.[13]

2.15 Mr Scott Barklamb, ACCI's Director of Workplace Policy elaborated saying that like other 'core industrialised NGOs', such as the Australian Medical Association, the Business Council of Australia and the Australian Conservation Foundation, ACCI has 'a different fundamental purpose and character from a commercial lobbyist...'[14]

2.16 The committee also received evidence from CPA Australia who raised concerns about the definition surrounding 'advocacy activities'. CPA Australia stated that it remained unclear whether an organisation such as theirs would apply for registration on the lobbyists register.[15] The Department of the Prime Minister and Cabinet (PM&C) subsequently informed the committee that changes were made to the *Questions and Answers* section on their website to explain that non-profit organisations such as CPA Australia are not required to register. However, were CPA

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11 Mr Tim Grau, Managing Director, Springboard Australia, *Committee Hansard*, 16 June 2008, p. 5.

12 Mr Stephen Jones, National Secretary, Community and Public Sector Union, *Committee Hansard*, 16 June 2008, p. 16.

13 Mr Daniel Mammone, Senior Advisor, Legal and Industrial, Australian Chamber of Commerce and Industry, *Committee Hansard*, 16 June 2008, p. 18.

14 Mr Scott Barklamb, Director, Workplace Policy, Australian Chamber of Commerce and Industry, *Committee Hansard*, 16 June 2008, pp 18–19.

15 CPA Australia, *Submission 5*, p. 1.

Australia to lobby on behalf of a client who was a member of its organisation, then registration would be required.[16]

2.17 Taking into account the disparate views concerning which types of lobbyists the Code should apply to, the committee refers again to the government's stated aim that it '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.'[17]

2.18 The committee is of the view that, despite some doubts that exist among some stakeholders regarding its scope, the Code as it currently stands provides a robust framework to achieve the government's stated objective.

2.19 Whilst the committee acknowledges that the definition of 'lobbyist' as it currently stands, is likely to cover small to medium enterprises more so than large organisations, the committee believes that it is too early to seriously consider an expansion of its scope. At the time of writing, the Code has operated for less than two months, and lists 171 lobbyists.

2.20 In order to ensure that the Code continues to achieve the government's stated objective, later in this report the committee makes a recommendation regarding a re-examination of the Code toward the end of 2009, so as to properly assess its operation in practice.

Procedural fairness

2.21 The committee heard evidence about the level of power vested in the Cabinet Secretary and the Secretary of PM&C, who are authorised to identify potential breaches and remove organisations and individuals from the register of lobbyists.[18] Parker and Partners stated that more information should be provided that explains the process behind the 'reporting and handling of potential breaches'.[19]

2.22 PM&C informed the committee of the various 'stages' that would occur once an allegation of a breach of the Code had taken place.[20] Officials submitted that in most cases it is expected the Secretary of PM&C would be informed in writing of a

16 Department of the Prime Minister and Cabinet, *Lobbying Register – Questions and Answers*, 23 June 2008, p. 4, www.aph.gov.au/senate/committee/fapa_ctte/lobbying_code/additional_info/PMC_Updated_Lobbyists_Register_Questions_Answers.pdf (accessed 5 August 2008).

17 Department of the Prime Minister and Cabinet, *Lobbying Code of Conduct*, May 2008, p. 1.

18 Department of the Prime Minister and Cabinet, *Lobbying Code of Conduct*, May 2008, pp 5–6. See clauses 9 to 10.5.

19 Parker and Partners, *Submission 6*, p. 2.

20 Ms Barbara Belcher, First Assistant Secretary, Government Division, Department of the Prime Minister and Cabinet, *Committee Hansard*, 23 June 2008, pp 2–4.

possible breach and that follow-up action would entail the lobbyist having an opportunity to comment on accusations made against them, also in writing. The committee was told that the Cabinet Secretary will be advised of any allegation of a breach.[21]

2.23 PM&C officials informed the committee about what burden of proof will be required by the Cabinet Secretary when passing judgement on allegations of impropriety against persons or organisations placed on the register of lobbyists:

> ...it would be reasonable to assume that the more damaging the penalty...the higher the standard of proof should be on the minister before making a decision to remove someone from the register. If we are talking about counselling a lobbyist because they may have made a claim that was a bit exaggerated I do not think that the standard of proof for such a finding would be as high as that required for a finding that would lead to the removal from the register.[22]

2.24 The committee heard evidence that relatively few avenues exist for appeal where a decision made by the Cabinet Secretary is disputed. In limited cases an appeal against a decision made by the Cabinet Secretary could be taken up with the Commonwealth Ombudsman, but only in regard to administrative decisions leading up to the Cabinet Secretary's decision and not a final decision to strike someone off the register.[23] The only other course of action involves application to the Federal Court or to the High Court.[24]

2.25 The committee notes that cost implications would make these options inaccessible for most people. Mr John O'Callaghan suggested that the Commonwealth Ombudsman be given broader powers of oversight to review decisions of the Cabinet Secretary in relation to the Code.[25]

2.26 The United Services Union (USU) contended that an avenue for appeal for employees was also needed:

> ...If there was to be an application of these sorts of mechanisms to employees, there needs to be transparency as to what mechanisms they

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21 Ms Barbara Belcher, First Assistant Secretary, Government Division, Department of the Prime Minister and Cabinet, *Committee Hansard*, 23 June 2008, pp 2–3.

22 Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch, Government Division, Department of the Prime Minister and Cabinet, *Committee Hansard*, 23 June 2008, p. 13.

23 Ms Barbara Belcher, First Assistant Secretary, Government Division, Department of the Prime Minister and Cabinet, *Committee Hansard*, 23 June 2008, p. 5.

24 Ms Barbara Belcher, First Assistant Secretary, Government Division, and Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch, Government Division, Department of the Prime Minister and Cabinet, *Committee Hansard*, 23 June 2008, pp 3–4.

25 Mr John O'Callaghan, Director, John O'Callaghan and Associates, *Committee Hansard*, 16 June 2008, p. 2.

> might have accountable to proceed if they need to challenge any of the applications to the punitive nature of what the code is intending...[26]

2.27 Nonetheless, the committee is reassured by the evidence given by PM&C that decisions on dismissal from the register would not be taken summarily, and that lobbyists would be given the opportunity to respond to allegations. The committee notes its recommendation that the operation of the Code be reviewed toward the end of 2009, and notes that this aspect of the Code would be subject to that review. This, taken together with the anticipated small number of offenders against the Code, lead to committee to make no recommendation for change to its terms at this stage.

Regulatory burdens

2.28 A significant issue raised with the committee was the perceived increase in the regulatory burden faced by lobbyists required to provide information to PM&C.

2.29 John O'Callaghan & Associates raised concerns particularly in relation to clause 5.5 of the Code, which stipulates three dates per annum by which lobbyists must confirm that their details are current:

> One of the hallmarks of the Rudd Government's election manifesto was to reduce the regulatory burden on small business, including promising changes to the BAS reporting impost....It seems odd, therefore, that a small lobbying operation like mine will have to report so frequently when I have such a small, but stable client list. It would be better if small businesses were required to report once per year on their lobbying details or on those occasions when their client list changes.[27]

2.30 The committee took evidence from PM&C officials concerning the steps taken to improve the regulatory burden of the clause. Officials submitted that regular reporting was deemed useful as a means to remind lobbyists of the need to keep their details up to date. Officials also informed the committee that a reminder email will be sent from PM&C to all registered lobbyists before each reporting deadline.[28]

2.31 The committee also heard that one way to improve the level of information publicly available on the register of lobbyists would be for lobbyists to disclose:

> ...a list of specific issues upon which they undertook lobbying activities for each client or entity. This should include to the maximum extent practical, a

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26 Mr Craig Shannon, Secretary, ACT Clerical and Administrative Employees Branch, United Services Union, *Committee Hansard*, 16 June 2008, p. 25.

27 Mr John O'Callaghan, Director, John O'Callaghan & Associates, *Submission 10*, p. 1.

28 Ms Barbara Belcher, First Assistant Secretary, Government Division, Department of the Prime Minister and Cabinet, *Committee Hansard*, 23 June 2008, pp 6–7.

> list of Bills, Acts, policies, programs, contracts, grants, regulations or appointments about which lobbying occurred.[29]

Legal status

2.32 An alternative mechanism to implementing a lobbying code of conduct, which was raised by several submitters, would be the application of a code by statute. For example an Act of Parliament could allow for enforcement of the principle behind the Code through the courts, civil actions and criminal prosecution.

2.33 The obvious difficulty with this idea is that it would be seen as an encroachment on the separation of powers between the judiciary and the Parliament. A statute would also have to survive a possible constitutional challenge based on the implied freedom of political communication.[30]

2.34 Notwithstanding these difficulties, this course attracted some support. Mr Tim Grau, Managing Director of Springboard Australia argued that a statutory code was his preferred method. Mr Grau took the view that a non-statutory code would be insufficiently rigorous and enforceable. Mr Grau stated:

> ...codes of conduct are just that, they are codes, and they are a guideline for behaviour. We have seen a number of examples where those codes are not [adequately enforced] or the interpretation of what the code is or means can change over time and therefore render them virtually ineffective.[31]

2.35 The committee also received evidence from the Public Interest Advocacy Centre (PIAC) which recommended that the current sanctions in the Code be strengthened. Interestingly PIAC compared the discrepancy between the *Standards of Ministerial Ethics* in which the Prime Minster may refer a breach to an appropriate independent authority, and the Code where there is little guidance to similar avenues when dealing with breaches by Ministers.[32]

2.36 However the committee notes that clause 2.1 of the Code states that it applies in conjunction with the Australian Government *Standards of Ministerial Ethic*s.[33]

Alternative frameworks

2.37 In addition to the option of a statutory code of conduct, other alternatives were put forward. These included the establishment of a Parliamentary Standards Officer or

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29 Springboard Australia, *Submission 1*, p. 6. See also the views of the Public Interest Advocacy Centre, *Submission 6*, p. 3.

30 Mr Harry Evans, Clerk of the Senate, *Submission 2*, pp 2–3.

31 Mr Tim Grau, Managing Director, Springboard Australia, *Committee Hansard*, 16 June 2008, p. 7.

32 Public Interest Advocacy Centre, *Submission 6*, p. 9.

33 Department of the Prime Minister and Cabinet, *Lobbying Code of Conduct*, May 2008, p.1.

Commissioner,[34] a corruption watchdog[35] and an Ethical Advocacy Association of Australia with voluntary membership.[36]

2.38 The committee notes these suggestions and believes they could warrant further examination if a lobbying code of conduct was intended to apply to all Members of Parliament. Because of the narrower scope of the Code as it stands, it is difficult to justify the establishment of bodies with powers of oversight beyond Parliamentary, Judicial and Independent Statutory Authorities (such as the Commonwealth Ombudsman and the Auditor-General).

Coverage of Parliamentarians

2.39 The terms of reference for the committee's inquiry required an examination of:

> [W]hether a consolidated code applying to members of both Houses of the Parliament and their staff, as well as to ministers and their staff, should be adopted by joint resolution of the two Houses.[37]

2.40 While the Code covers ministers and parliamentary secretaries, several witnesses supported the view that the Code should be expanded to cover all Members and Senators. Witnesses considered that this could be achieved in one of two ways: through a joint resolution of the Senate and the House of Representatives; or through the implementation of an Act of Parliament.

2.41 Springboard Australia argued that the expansion of the Code to all Parliamentarians would enhance the level of transparency of lobbying activities and the public's understanding of how policy positions are determined:

> We believe lobbying of the Opposition [should] be subject to similar disclosure as lobbying of the Government. The public equally has a right to know by whom, and how, the alternative Government of Australia is being lobbied and potentially influenced as it forms policy positions. This is particularly important in the lead-up to elections, conscience votes and when the Opposition may be able to influence the passage of legislation through the Senate.[38]

2.42 Whilst noting that he never experienced any corruption or misconduct from lobbyists, Senator Murray emphasised why, in his view, the Code should also be extended to the Senate cross benches given the important role they play in the Senate:

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34 Public Interest Advocacy Centre, *Submission 6*, pp 6–7.

35 Mr David More, Proprietor, The Next Level Consulting Services, *Committee Hansard*, 16 June 2008, p. 3.

36 The Next Level Consulting Services, *Submission 11*, pp 5–6.

37 *Journals of the Senate*, 14 May 2008, p. 389.

38 Springboard Australia, *Submission 1*, p. 3.

> ...I have had carriage over the last 12 years of decisions which have affected tens of billions of dollars, holding a balance of power position. For someone like me not to be subject to a lobbyist code is just ridiculous. The point...that it should apply to all members and senators, not just government ones, I think is well made and I want to reinforce that point by putting my own position on the record.[39]

2.43 The Clerk of the Senate, Mr Harry Evans, outlined a number of issues he thought should be considered were the Code to be applied to both Members of the Houses. The Clerk submitted that, while a joint resolution of the House of Representatives and the Senate could be implemented, it may give rise to an argument that the Houses of Parliament should not seek to regulate the internal processes of an executive government.[40]

2.44 In order to overcome this hurdle the Clerk argued that an alternative scheme could be developed whereby three separate but similar regimes would be introduced – one regime for each house, to regulate the conduct of Members and Senators, and one to regulate the conduct of ministers. This approach would also overcome the restriction contained in section 50 of the Constitution which mandates the independence of each House.[41]

2.45 The Clerk also stated that the three elements (both Houses and the Executive) could develop a joint registration process for lobbyists to reduce any administrative burdens. It would be necessary to establish a joint office with representatives from the Houses and Executive to administer the register and the registration process.[42]

2.46 The committee heard that the implementation of a joint scheme would face the serious criticism that it is not acceptable to regulate how, and with whom, private members of Parliament communicate when conducting their business. The Clerk stated 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. The registration and declaration of interests requires only disclosure; a lobbying code would involve prohibiting members from dealing with certain persons (unregistered lobbyists).[43]

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39 Senator Andrew Murray, *Committee Hansard*, 16 June 2008, p. 7.

40 Mr Harry Evans, Clerk of the Senate, *Submission 2*, p. 1.

41 Mr Harry Evans, Clerk of the Senate, *Submission 2*, p. 1.

42 Mr Harry Evans, Clerk of the Senate, *Submission 2*, pp 1–2.

43 Mr Harry Evans, Clerk of the Senate, *Submission 2*, p. 2.

2.47 The committee is of the view that these concerns are significant. It would be troubled by any regulation that unwittingly limits honest forms of communication by members of Parliament during their day-to-day activities. The committee is not persuaded that the benefits of extending the Code to all parliamentarians would outweigh the disadvantages.

Post-employment prohibitions

2.48 A significant element of the Code is the introduction of post-employment prohibitions on government and various public sector staff engaging in lobbying activities.

2.49 Clause 7 states that Ministers and Parliamentary Secretaries, once they have ceased to hold office, will not be allowed to engage in lobbying activities that are related to any matter they had dealt with during the last 18 months of their employment, for a subsequent period of 18 months. This obligation is raised from 6 December 2007 onward.[44]

2.50 Clause 7 imposes similar restrictions on the following groups, not be allowed to engage in lobbying activities that are related to any matter they had dealt with during the last 12 months of their employment, for a period of 12 months:

- staff employed under the *Members of Parliament (Staff) Act 1984* (MOPS Act), at Advisor level or above (from 1 July 2008);
- members of the Australian Defence Force at Colonel level or above or equivalent (from 1 July 2008); and
- Agency heads or persons employed under the *Public Service Act 1999* in the Senior Executive Service or equivalent (from 1 July 2008).[45]

2.51 The committee received a range of evidence surrounding this matter, particularly relating to post-employment restrictions on ministerial staff. Several organisations raised concerns about the retrospective nature of the restrictions and the negative effects of reducing the pool of experienced employees available to firms.

2.52 Both the United Services Union (USU) and the CPSU expressed concern about the application of clause 7. The USU stated that it was unacceptable for the clause to be applied retrospectively.[46]

2.53 The CPSU presented the committee with several reasons why it believes that a separate code of conduct should be developed and tailored to meet the specific needs

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44 The *Standards of Ministerial Ethics*, which apply concurrently with the Code, prohibit, for a period of 18 months, former ministers and Parliamentary Secretaries having business dealings with government representatives on matters with which they had official dealings as minister.

45 Department of the Prime Minister and Cabinet, *Lobbying Code of Conduct*, May 2008, p. 4.

46 United Services Union, *Submission 7*, p. 1.

of ministerial staff.[47] The CPSU noted the existing regulatory mechanisms, such as the MOPS Act, the *Australian Public Service Act 1999*, the *Australian Public Service Code of Conduct*, the *Australian Public Service Values* and the *Crimes Act 1914* all deal with various aspects of conduct by ministerial, Australian Public Service (APS) and Defence Force employees.

2.54 The CPSU also argued that, because there is a fundamental difference in the employment conditions of ministers compared with those employed under the MOPS Act, such as the possibility for the termination of MOPS staff at any time, that clause 7.2 is not equitable:

> ...if a Minister is demoted his or her employment continues, the DLO [Departmental Liaison Officer] returns to the Department but the Ministerial Advisor has to find a new job to put food on the table. The effect of applying the post-separation employment on all "government representatives" fails to acknowledge the disparate job security and superannuation entitlements that exist between Ministers, APS employees and MOPS staff.[48]

2.55 The CPSU also directed the committee to the fact that neither the MOPS Act nor the MOPS Collective Agreement 2006–09 contain any reference to the post-employment prohibition conditions set out in the Code. The CPSU contended that, if the Government wishes to depart from the current terms and conditions set out in these legally binding documents, then a separate code of conduct should be introduced that sets 'appropriate workplace guidelines and a comprehensive training program.'[49]

2.56 ACCI informed the committee that it was concerned with post-employment prohibitions for similar reasons, particularly having regard to the possibility that organisations outside the scope of the Code could be inadvertently affected in their recruitment choices.[50] ACCI stated:

> A legitimate and bona fide part of recruiting talented individuals to work (either as an employee or contractor) for ACCI or its members is to consider all persons with the highest aptitude, skill and knowledge...The common law principles on restrain of trade state that, prima facie, unless it can be shown that the restraint of trade is reasonable, it will be held to be contrary to public policy and unenforceable...ACCI is concerned that the not for profit sector may be denied expertise of vital individuals, best placed to make a contribution to national policy debate.[51]

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47 Community and Public Sector Union, *Submission 9*, pp 3–4.

48 Community and Public Sector Union, *Submission 9*, p. 5.

49 Community and Public Sector Union, *Submission 9*, p. 5.

50 Australian Chamber of Commerce and Industry, *Submission 8*, p. 11.

51 Australian Chamber of Commerce and Industry, *Submission 8*, p. 12.

Conclusion

2.57 The committee acknowledges that some aspects of the Code are not wholly supported by some stakeholders. However, the committee notes the widespread underlying support expressed for a code of conduct, that implementation of the Code is in a relatively early stage, and that it may be some time before it becomes clear if its objectives are realised. This being the case, the committee proposes to review the operation of the Code toward the end of 2009, having specific regard to all matters considered in this report and any others that arise in the interim period.

Recommendation 1

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

Senator Polley

Chair