

Bill McKinley



The Secretary
Department of the
Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

Lobbying Code of Conduct - Comments on Exposure Draft

Dear Secretary,

I am writing to provide my comments on the exposure draft of the Lobbying Code of Conduct. By way of background, I am the Government Relations Manager of a peak industry body. My organisation is not directly affected by the code, so I am making this submission personally.

At the outset, I would like to say that I welcome the code. In particular, the principles of engagement with government representatives (section 8) are a clear list of ethical standards that lobbyists can use to explain to their clients what they can and cannot do.

I am, however, concerned about section 10.3 of the draft code, which states that:

10.3 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 Cabinet Secretary, 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 Cabinet Secretary, in his or her absolute discretion, directs the Secretary to remove the lobbyist or the individual from the Register.

Section 10.3 effectively gives the Cabinet Secretary the power to end the professional career of any lobbyist on the register. A decision under this section would have the same

effect as deregistering a doctor or striking a solicitor off the rolls. As a result, it is important the Cabinet Secretary only uses this power after following a fair and informed decision-making process.

The code does not set out such a process and there is no easy way of appealing decisions, either.

The code is not an enactment, so an affected lobbyist would not be able to use the *Administrative Decisions (Judicial Review) Act* to seek a review of a decision.

The lobbyist's only option would be to appeal to the High Court under section 75(v) of the Constitution, which could hardly be described as a straightforward exercise. After all, the ADJR Act was specifically drafted to cut through the tangles of the old public law remedies available through the High Court.

It would, of course, be possible to bring the code within the ambit of the ADJR Act by passing a special Act of Parliament. I understand the department is not disposed to recommend this option to the government on the grounds that section 10.3 would only ever be used in extraordinary circumstances.

I therefore ask you to consider redrafting section 10.3 to set out clear rules about how the Cabinet Secretary should go about making decisions under the section.

In particular, the code could require the Cabinet Secretary to:

- inform the affected lobbyist that action is being considered against them under section 10.3, and on what grounds;
- consider a submission from the lobbyist in response to those grounds; and
- provide the lobbyist with a written statement of reasons for any decision taken under the section.


I have no doubt the department would end up advising the Cabinet Secretary to take steps along these lines anyway. But it would be preferable, I think, to include rules like these in the code from the outset to ensure they are understood by everyone.

In my view, the addition of these rules would secure a measure of administrative fairness for affected lobbyists.

McKinley/3

The rules would also benefit the Cabinet Secretary, who would have the confidence of knowing that his or her decisions under section 10.3 were based on a fair and publicly understood process.

Yours sincerely,

A handwritten signature in black ink that reads "Bill McKinley". The signature is written in a cursive style with a large, sweeping flourish at the end.

Bill McKinley
16 April 2008