

3 April 2008

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

Dear Sir

I refer to the Cabinet Secretary's media release on the Register of Lobbyists, which I received today through the electronic media alerts from my department, and which invited comments.

In accordance with that request, I wish to submit the following comments on the Exposure Draft on the Lobbying Code of Conduct.

I am a Commonwealth public servant in the Department of Families, Housing, Community Services and Indigenous Affairs. The views expressed are my own personal views.

Yours sincerely

Isabella M. Martinis  
Bachelor of Arts (Honours) Australian National University  
Bachelor of Laws (Honours) University of Melbourne

Contact details:

A block of text that has been heavily redacted with black scribbles, obscuring the contact information provided under the heading 'Contact details:'.

Isabella M. Martinis  
3 April 2008  
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## COMMENTS

### EXPOSURE DRAFT LOBBYING CODE OF CONDUCT APRIL 2008

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#### 3. DEFINITIONS

*"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.*

#### **Comment**

This definition will not cover bodies which do not employ staff under the Public Service Act 1999.

For example, agencies which engage personnel under their own Act and/or an Act other than the PS Act include -

- Australian Federal Police
- Australian Prudential Regulation Authority
- Australian Government Solicitor
- Department of the Senate
- Department of the House of Representatives
- Department of Parliamentary Services

#### **Solution**

Consider including bodies which operate under the Commonwealth Authorities and Companies Act 1997 or the Financial Management and Accountability Act 1997.

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#### 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 of the lobbyist including, where the business is not a publicly listed company, the names of owners, partners or major shareholders, as applicable

...

#### **Comment**

Consider whether this provision gives sufficient transparency.

## **Solution**

The business details should include business or trading names. Such names are frequently different from the registered company or organisation name, or an individual's name.

The details could also include parent and subsidiary companies.

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*5.3 The lobbyist shall submit updated lobbyist's details to the Secretary in the event of any change to the lobbyist's details.*

## **Comment**

There could be significant lapses of time between changes in details and when the register is updated.

## **Solution**

Add -

The lobbyist shall submit the updated details as soon as is practicable and no later than 7 business days after the change occurs. The lobbyist should submit the details prior to engaging in further lobbying activity. The lobbyist must inform the Government representative if there are details which have not been submitted.

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## **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.*

## **Accessibility**

Provision should be made for access to hard copies of the Register; copies in languages other than English; and copies for people who have hearing and/or sight impairment.

A contact position, telephone number, fax and email address should be given.

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## **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 cause or threaten any detriment,*

## **Comment**

Lobbyists' conduct by its nature may have the effect of causing detriment at times.

## **Solution**

"(a) lobbyists shall not ..... threaten or unlawfully cause any detriment."

For example, "unlawfully cause" would be intended to cover a detriment caused by a misrepresentation that was unlawful under fair trading legislation or at common law including negligence.

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*(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, and*
- (iv) the nature of the matters that their clients wish them to raise with Government representatives.*

## **Comment**

In the absence of a requirement to do so in writing, it may be difficult to establish whether this notification was or is actually given, and whether each element of the information was provided.

## **Solution**

A standard form could be provided to lobbyists, which they would hand over, fax or email to the Government representative when making the initial contact.

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## **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*

*(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.*

## **Comment**

The 30 month-imprisonment rule should be reconsidered. Indictable offences carry various sentences. Serious offenders may be convicted and receive shorter terms or not be imprisoned. The outcome may depend on cultural and socio-economic factors. Socially disadvantaged groups are vulnerable to the commission of crimes of poverty and to imprisonment.

The 10 year rule may be insufficient in cases of large scale or systemic fraud. In contrast, it may be excessive for an individual crime with a lower impact.

Some flexibility may be justified for representatives from some disadvantaged groups, or people with a disability which shortens life expectancy.



## **Solution**

Add

"(c) If, in the Secretary's opinion, the application of para (a) or (b) would cause result in a disadvantage on the grounds of disability or race, the Secretary may modify the terms of a statutory declaration and register a lobbyist. If the Secretary decides to register a lobbyist under this provision, the Secretary must first advise the Cabinet Secretary, who may direct the Secretary not to register the lobbyist."

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### *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.*

## **Comment**

In spite of the words "absolute discretion" it may still be possible that the Cabinet Secretary's decision is questioned. An applicant might seek to invoke administrative law. For example, section 13 of the Administrative Decisions (Judicial Review) Act 1977 enables a government decision maker to be compelled to give reasons (if the decision is made under legislation and not specifically exempted from this scrutiny).

If the Code is not legislated, court actions are still a possible line of attack against decisions which are claimed by the objector to be biased or unreasonable.

Consideration should be given to the adverse potential of this provision to exclude lobbyists with whom a government does not agree.

## **Solution**

Measures should be taken to strengthen Government representatives' capability in dealing with lobbyists, including those with whom a government may disagree. This would help to ensure that government decisions take into account all relevant considerations, a requirement of administrative law and generally a prudent course contributing to sustainable administration.

Government representatives should receive practical guidance on, first, confirming that a lobbyist is registered, and secondly, ethical and appropriate dealing with lobbyists.