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SUBMISSION ON DRAFT LOBBYING CODE OF CONDUCT

Introduction

The submission supports in principle the registration of lobbyists and the code of conduct outlined in the Draft Exposure. But it wants the register to be removed from the aegis of the Secretary of the Department of Prime Minister and Cabinet to an independent body. The submission also proposes that the definition of lobbyist be widened to include industry and professional associations and peak councils. Consideration should be given to including religious and community based organizations on the register. An annual registration fee of \$1,000 is proposed. The submission argues that greater transparency would be realized if those registered were required to reveal to the Registrar (1) the number of given contacts they had in a year with Ministers and (2) the amount spent in the year on lobbying activities. The Registrar would then compile an industry total for the year and publish the statistics on its website. The submission also recommends that backbench members of Parliament – Senators and Members – be banned from acting on behalf of lobbyists or accepting fees, retainers or any other reward for services rendered.

1. Existing and Proposed Legislation

1.1. On 1 March 1984, the Hawke Government inaugurated a register for lobbyists and their clients. This register was not made available to the public. The legislation defined a lobbyist 'as a person or company, who for financial or other advantage, represents a client in dealings with Commonwealth Government Ministers or officials'. Two confidential registers were established. The Special Register was for lobbyists whose clients were foreign governments or agencies, and the General Register for other lobbyists and their clients.

1.2. The legislation excluded from registrable activity representations made directly by representative organizations, peak councils, professional associations and community interest groups.

1.3. The Rudd Government's Exposure Draft for the Lobbying Code of Conduct and Register of Lobbyists is some improvement on the existing legislation (which appears to have lapsed) although a claim is made that 'this will be the first formal lobbyists register ever adopted by a Federal Government'.

1.4. Setting aside the fact that it is not the 'first', the proposed Register is silent on the question of foreign government and agency lobbying.

1.5. Is this not seen to be a matter of concern or are all 'third party clients' equal under the proposed legislation?

1.6. Contrary to a headline in *The Canberra Times* 'Tough New Rules for Lobbyists' (3 April 2008) the proposed Register and Lobbying Code of Conduct falls far short of what is necessary to ensure transparency in the behaviour of an industry which seeks to advance the interests of clients and influence regulatory and legislative outcomes.

1.7. According to *Lobbying in Australia* (Rosenberg Publishing, 2006) the 150 lobby groups analysed had a combined budget of \$713,793, 364 or an average of \$6.4 million. They employed more than 260 public relations officers and had more than 2 431 staff. As a growing industry annual turnover and staff would be higher in 2008 than in 2005-06.

2. Independent Register and Registration Fees.

2.1. Given the potential for the private interests of lobbyists and their clients to be in conflict with the broader public interest, it is a matter of concern that the proposed Register of Lobbyists will be administered by the Secretary of the Department of Prime Minister and Cabinet.

2.2. The Register and its administration should be removed from the political/executive context and placed in the hands of an Independent Authority or office of the President of the Senate or Speaker of the House of Representatives.

2.3. If an Independent Authority was given the responsibility to administer the Register then the cost of its operations could be met by imposing an annual Registration Fee on lobbyists.

2.4. There is no mention of a Registration Fee in the exposure draft yet the lobbying industry has a turnover in excess of one billion dollars a year and charges its clients dearly for its services.

2.5. Lobbyists enjoy privileged access to Ministers, Parliamentary Secretaries, ministerial staff, Australian Public Service employees and members of the Australian Defence Force, which is the reason why clients engage lobbyists to act on their behalf.

2.6. Why should a lucrative industry have free access to Government and Parliament House to undertake its business when the media have to pay 'rent' of over one million dollars a year to the Department of Parliamentary Services to report Parliament and the administration?

2.7. As lobbyists gain a financial benefit from their privileged access to the Government and its agencies then they should contribute to the cost of registering and regulating their activities.

2.8. An annual Registration Fee of \$1,000 including GST would be appropriate.

3. Definition of Lobbyist Inadequate

3.1. The definition of a lobbyist in the Exposure Draft is manifestly inadequate. It excludes about 90 per cent of those engaged in professional lobbying activities in Canberra.

3.2. The draft definition is limited to a person, company or organization conducting 'lobbying activities on behalf of a third party client' but excludes some of the biggest lobbyists in the nation, the so-called 'non-profit' and professional associations that are constituted to represent the interests of their members. The draft also excludes legal and accountancy firms that have designated lobbying sections. If overseas experience is any guide law firms will increasingly be engaged in lobbying activities. Also excluded are non-government organizations (NGOs) that are heavily engaged in single issue lobbying.

3.4. The top five Canberra lobby groups named in a Clients Solutions Survey of Politicians Lobbying Preferences 2006 were the Australian Medical Association, the Australian Chamber of Commerce

and Industry, the Pharmacy Guild, the Australian Industry Group and the National Farmers Federation (*Lobbying in Australia*).

3.5. To suggest, as the draft does, that members of professions, 'such as doctors' only 'make occasional representations to Government' is not the point. When the Australian Medical Association (AMA), or a legal or accountancy firm engages in lobbying their aims are just the same as professional lobbyists acting for third parties, to influence legislative outcomes and advance the interests of their members.

3.6. The Australian Medical Association (AMA) admits one of its roles is lobbying in its statement of activities: 'Acting as the principal coordinating and *lobbying body* for the medical profession'. To achieve its aims, the AMA owns a headquarters building in Canberra and has a budget of \$16.5 million.

3.7. Dr Wendy Craik, then Executive Director of the National farmers Federation, said there were advantages in being an *industry lobby group with its own secretariat*. 'We're more cost effective than contracting commercial lobbyists and can speak from strength directly to government' (speech, 8 October 1999).

3.8. The Motor Trades Association not only has its own headquarters building in Canberra but owns the Department of Foreign Affairs and Trade building, which it bought for \$200 million for its superannuation fund which is valued at around \$5 billion. A lobbyist with very deep pockets.

3.9. To suggest that these powerful, well-funded and wealthy organizations (including the Business Council of Australia, the National Farmers Federation and the Australian Chamber of Commerce and Industry) are not engaged in lobbying flies in the face of reality. They should be obliged to register as lobbyists.

3.10. These influential lobby groups appear to be adopting the practice of Washington industry lobbyists, who spend most their time and money on ensuring their members get their share of federally funded programs and subsidies.

3.11. A good Australian example is the Australian General Practice Network (AGPN), the peak body for general practitioners. AGPN maintains headquarters at Barton and will receive \$243 million from the Government over three years, 2006-2009. AGPN has a staff over of 20 plus in Canberra, and over 1,000 nationwide in 117 State and Territory offices, all of whose salaries are paid by the Australian Government.

3.12. AGPN secured a High Court tax decision (2006) in its favour, which ruled its Central Bayside General Practice Association Limited was an independent body that operated in the not-for-profit sector and could keep its charity status. It seems AGPN manages to be a 'charity', a service provider almost totally subsidized by the Australian Government and a lobbyist, all at the same time.

3.13. There are obviously charities for tax purposes, and other charities that operate under the same rules but actually work for the public good rather than for themselves. These in the main are the smaller organizations run by volunteers, with few paid staff.

3.14. However, it could be argued that everyone involved in lobbying – including NGOs – should be on the register, although that could be a Stage 2 objective, following the registration of major lobbying organizations.

3.15. Religious status should not mean exclusion from the need to register.

3.16. The Australian Christian Lobby, Anglicare and Australian Catholic Health are all in the business

of lobbying and should be included on the register.

3.17. However, where appropriate, small volunteer and religious-based bodies may be charged a lower annual registration fee than lobbying firms and industry and professional associations to reflect their different status.

3.18. A registration fee of \$1,000 per annum would be appropriate for all mainstream lobbyists. Lobbying firms would simply pass on the fee to their clients while industry and professional organizations can easily absorb the annual cost.

4. Activities of Lobbyists.

4.1. The Exposure Draft does not include an obligation on the part of registered lobbyists to disclose their activities on behalf of a client or how much they spent on the lobbying campaign.

4.2. No doubt the defence 'commercial in confidence' would be raised against such disclosure but it would be in the public interest to know the number of contacts a lobbyist had with Ministers in a given year and the total related expenditure.

4.3. To maintain privacy, an industry figure could be collated by the Registrar and the information provided annually, e.g. 'in 2008-2009 there were X number of registered contacts between lobbyists and Ministers, and expenditure of \$X million recorded'.

4.4. In the interests of transparency, it would be useful to be able to link an increase in activity in a given year with a particular legislative or regulatory outcome. After all, the lobbyists would certainly boast of the success they achieved on behalf of the client, so why shouldn't the public know influence was brought to bear to ensure a successful outcome. The public may well be paying for it in federal taxes foregone or new charges imposed.

4.5. The Exposure Draft states that 'lobbying is a legitimate part of the democratic process' and no one could argue with that.

4.6. The fact that the Rudd Government's Register will be a public document published on a website and regularly updated is to be commended. It is an improvement on the Hawke Government registers that were confidential.

5. Prohibition of Backbenchers' Lobbying Activities

5.1. All backbenchers – Senators or Members – should be banned from accepting fees, retainers or any other reward for acting on behalf of lobbyists (including peak councils, industry and professional associations, law and accountancy firms).

5.2. Members of Parliament are elected and paid by the taxpayer to represent full-time the interests of their electors. They should not undertake work or travel for lobbyists in addition to their parliamentary responsibilities and duties.

6. The Lobbying Industry

6.1. In addition to national and international lobbying firms, there are hundreds of lobbying groups in Australia ranging from large, powerful, wealthy industry groups and professional associations to small community and volunteer organisations. All striving at some time or another to get to the ear of government.

6.2. In Canberra alone, there are over 150 lobby groups and consultants who have been established

to monitor, defend and advance their particular interest. Many of the organizations own their headquarters buildings and thus possess considerable assets with which they may underwrite their lobbying activities.

6.3. There is no level playing field when it comes to lobbying Government.

6.4. Indeed, successful lobbying costs a great deal of money.

6.5. Journalist Jason Koutsoukis estimated ' a starting price of \$50,000 for qualitative and quantitative research. Market research comes even higher, with a minimum of around \$250,000. The bill can reach \$500,000 if you include presentations to committees of backbenchers, hosting dinners around the country and raising the media profile of an issue'

6.6. Government today is big business; Budgets amount to \$288 billion, with health, social services and defence accounting for a huge part of that expenditure.

6.7. With so much money available, courtesy of the minerals boom, industry and professional associations want to ensure they get a bigger piece of the pie, whether directly in infrastructure or indirectly by providing services. How can they best achieve this? By lobbying.

6.8. Successful lobbying is carried out in private. The sure failure of a lobbying activity is when the lobbyist is obliged to go public to argue the case in the hope of marshalling support for the cause.

6.9. Australia, which is ill-fated to follow much American precedent, will no doubt find its national capital hosting more and more lobbyists. In Washington, there are 35,000 lobbyists.

6.10. Therefore now is the time to begin to implement the registration and regulation of the lobbying industry.

6.11. In an ideal democracy, Government can be depended upon to act in the interests of the people it represents. But we don't live in an ideal world but one in which deals, self interest and dishonesty play a role. Greater Regulation of the lobbying industry would help ensure the public interest is protected.

6.12. Politics is the art of compromise and it is important that such compromises be reached as openly and fairly as possible. Government should be guided by the precept of Jeremy Bentham to deliver the greatest good for the greatest number of people.

6.13. If that was honoured there would be no guns in American households, but the existence of the National Rifle Association and a supine Congress intimidated by this powerful lobby group means it will never happen.

6.14. That may be an extreme example but let's not assume that lobbyists will always be guided by the public interest, or Parliament responsive to it. Bi-partisan policies can be a neat way of ignoring majority public opinion on issues.

6.15. A lack of transparency about lobbying can only reinforce public cynicism about politics and politicians.

6.16. As an example, let me quote from an article by Katharine Murphy in *The Age* (6 March 2008) in which she noted the appearance in the ministerial wing, in February, after an absence of 10 years, of Bill Kelty, former secretary of the ACTU. Mr Kelty is now a non-executive director at Linfox. Accompanying Mr Kelty was his boss, the trucking magnate, Lindsay Fox.

6.17. Ms Murphy wrote: 'Ten days later, [Transport Minister] Anthony Albanese announced a new road safety and productivity package, which contained a silver lining for the trucking industry: an

increase in heavy vehicle charges planned for July would not go ahead until January 2009'. The backdrop for the announcement was a huge Linfox truck delivered to Canberra for the occasion. 'It would be silly to suggest one and one make two in this parable', said Murphy but she added, 'the anecdote provides a glimpse of a world hidden from most people outside the intersecting worlds of business and politics'.

6.18. At least the Budget process is more transparent, with Treasury receiving a record number of submissions this year from interest groups and individuals. According to Laura Tingle (*Australian Financial Review*, 30 January 2008) lobby groups and organizations doubled their submissions from 151 last year to more than 300 this year.

6.19. This form of lobbying, making proposals and requesting particular action, is at least open and on the record, although it maybe followed up by more private and intimate discussions between lobbyists and Ministers.

6.20. It is the range and frequency of contact between lobbyists, Ministers, and government agencies throughout the year that is of more worry.

6.21. Dr Carmen Lawrence, former Premier of WA and MHR said 'Since we are aware of only a small proportion of the lobbying that goes on, there is a reasonable suspicion that a great many more decisions are being shaped without our knowledge and without the vested interest groups having to face public scrutiny of their claims and arguments' (*The Parliamentary Supermarket; Buying the Policy of Your Choice*, On Line Opinion, 4 March 2004).

6.22. A related question, not covered in the Exposure Draft, is the issue of donations to political parties and how much influence that buys after an election. According to the Australian Electoral Commission, total funding of the major Federal political parties by donations in the 2004 election amounted to nearly \$80 million as against \$36 million provided by public funding. The purpose of public funding surely was to reduce the reliance of political parties on private funding. It may be that donations are a form of lobbying that opens doors and subsequently leads to a sympathetic hearing of an industry or individual request. At the State and Local Government level donations by property developers are a cause for concern.

7. Summary

7.1. In 1983 the Hawke Government argued that 'representative councils, professional organizations and community groups' should not be required to register because 'their interests are publicly known'. (*Lobbying in Australia*).

7.2. While that may be true, it does not mean that their activities in lobbying Government in private to defend or advance the interests of their industry, profession or members should not be subject of registration.

7.3. The public may in a vague way know who they are and what they represent in a general sense but when they seek to intervene to influence legislative or regulatory outcomes they are acting in their private interest.

7.4. The Rudd Government's proposed Code of Conduct and Registration is a step in the right direction provided its base is widened to include the major lobbyists – organizations and professional bodies – and not just those acting on behalf of third parties.

RECOMMENDATIONS

1. **The Register of Lobbyists and its administration be placed in the hands of an Independent Authority or within the office of the President of the Senate or Speaker of the House of Representatives.**
2. **The definition of 'lobbyist' be widened to include industry and professional organizations, associations and community organizations acting on behalf of their members**
3. **An annual registration fee for lobbyists of \$1,000 be charged to cover the cost of the administration of the scheme.**
4. **Religious and community non-profit organizations be charged a much lower registration fee than major lobbying firms, industry and professional associations.**
5. **All registered lobbyists of whatever complexion be obliged to disclose annually to the Registrar the number of contacts made with Ministers and to reveal total expenditure on lobbying activities.**
6. **The Registrar to reveal annually the total number of lobbying contacts with Ministers and the total expenditure involved.**
7. **Backbench members of Parliament be precluded from acting on behalf of lobbyists on the register and accepting retainers or other rewards for their work.**

Further reading:

***Lobbying in Australia*, Julian Fitzgerald, Rosenberg Publishing Pty Ltd, NSW, 2006.**

'Buying a Seat at the Table', Julian Fitzgerald. Chapter 8, *The Crikey Guide to the Federal Election*. Editor Christian Kerr. Penguin, 2007.

Submission presented by

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