



16 April 2008

Mr Terry Moran AO
Secretary
Department of Prime Minister and Cabinet
GPO Box 6500
CANBERRA ACT 2600

Dear ~~Secretary,~~ *Mr Moran,*

Re: Lobbying Code of Conduct – Exposure Draft

The Australian Chamber of Commerce and Industry (ACCI) welcomes the opportunity to provide input on the Department of Prime Minister and Cabinet's exposure draft of the Lobbying Code of Conduct ('the draft Code') before its finalisation and implementation.

Whilst not specifically wishing to address every issue in the exposure draft, there are a number of issues which we wish to draw to your attention as being of particular significance to the operations of Australia's business representative organisations, including ACCI and its members.

ACCI and Member-based Employer / Business Organisations

ACCI is Australia's peak council of business and employer organisations, representing 35 separate member-based organisations ranging from each principal State and Territory Chamber of Commerce, to national and sectoral industry associations.

Our structure is in the form of a not-for-profit public corporation and our members (who are these Chambers and industry organisations) pay a subscription fee for joining ACCI. We are a peak council of industrial organisations under s.100(11) of the Workplace Relations Act 1996, whilst also being formally recognised under the National Workplace Relations Consultative Council Act 2002 (Cth). Internationally, ACCI is recognised by the International Labour Organisation, International Organisation of Employers as Australia's most representative body on labour matters, and in respect of which Australia has treaty obligations. Amongst other international affiliations, we also are members of the International Chamber of Commerce (ICC) and administer the Australian secretariat of the ICC.

Our members' legal structure and purpose may differ from ACCI, with some members being incorporated associations, incorporated entities under the Corporations Act and others existing by virtue of Commonwealth and State industrial relations legislation (which grants body corporate status). Moreover, those ACCI member bodies that are registered industrial organisations are generally exempt from income tax as a non-profit organisation. However, ACCI does not have direct knowledge as to which of our members may or may not be endorsed as deductible gift recipients (DGR), but would anticipate that no member is a DGR recipient.

Level 3, 486 Albert Street, East Melbourne VIC 3002
PO Box 18008, Collins Street East, Melbourne VIC 8003 Australia
Telephone: 61-3-9668 9950 Facsimile: 61-3-9668 9958
Website: www.acci.asn.au
ABN 85 008 391 795



Our Chambers and industry organisation members provide broad based services to the business community and their corporate / employer members, and also specific services on a fee for service basis in most cases to members but in some cases to non members as well.

Exemptions

One of the services provided by ACCI and our member based Chamber and industry organisations are advocacy and lobbying services. Indeed, these are well established and are core activities. They would be "lobbying activities" as defined in proposed clause 3 of the draft Code.

However, we understand that the government's intention is for membership based organisations and their peak councils (such as the ACTU, trade unions, ACCI, Chambers and other industry and business organisations) to not be drawn into the regulatory structure of the draft Code.

We support this intention; the core advocacy and lobbying services of these organisations is well established, for the general benefit of their constituents and usually purchased as a generic member service.

To this end, it appears that ACCI and its members, may fall under the exemptions created in the definition of "lobbyist" (a) or (b) (particularly (b) "... organisations constituted to represent the interests of their members that are not endorsed as deductible gift recipients").

However, it is important that the draft Code does not inadvertently alter the status of this exemption by virtue of the fact that some of these organisations have, in recent years, moved to provide a specific lobbying service (as distinct from a general lobbying activity) to a certain company or group of companies which may or may not be a member of the organisation.

As this service does not alter the character of the organisation, we would consider that the organisation would still be exempt under (a) or (b) of the definition of "lobbyist". However we would recommend that this be clarified by including an additional point under the 'for avoidance of doubt' category (after para (f) of the definition) the following:

"For the avoidance of doubt, this Code does not apply to organisations whose character is that of an organisation listed in para (b) above even though the organisation may, from time to time, provide a specific lobbying activity for a member or a group of members, or for a prospective member on a fee for service basis or otherwise."

It is also unclear whether ACCI's members (or their members, in turn) are a "third party client" (as defined) or whether ACCI or its members engage on its "own behalf rather than for a client" whilst engaging in lobbyist activities. This could be clarified by including, at the end of the current paragraph headed 'For the avoidance of doubt' the following additional sentence:

"An association or organisation within the meaning of paragraph (b) is taken to be acting 'on their own behalf rather than for a client' if they are acting in the interests of or on behalf of their members."

Another way to address these issues could be to create an additional category of exemption that explicitly exempts from the Code long standing bona fide (registered and unregistered) industry and employer organisations such as ACCI and its members, particularly if it is the intention that the Code not apply to us or our members. ACCI would, of course support this also extending towards trade unions and their peak council, and other membership based employer or business organisations.

Employment or Engagement of Persons by Exempt Organisations

From time to time membership based employer and business organisations engage, either as employees or as consultants, former Ministers, ministerial staff or senior employees of the Commonwealth.

Whilst an organisation may be exempt from the Code, the current drafting of clause 7.2 of the draft Code restrains such senior public servants, staff and former Ministers for a period of 12 to 18 months after they cease their employment, from engaging in "lobbying activities" regardless of the exempt (or otherwise) status of their employer or potential employer. This would even restrain for a considerable period such persons from being engaged by exempt industrial organisations (as an employee or on a contract basis).

This issue needs clarification. ACCI would welcome amendments to the Code to allow such persons being employed (or engaged on a contract basis) on a bona fide purpose by exempt organisations, and not having to be recorded on the register of lobbyists in respect of that work.

We would suggest that clause 5.1 and 7.2 be amended to include after the phrase "lobbying activities" the words "*and who is a lobbyist*".

We look forward to your consideration of these matters, and would be more than pleased to clarify any of these matters in direct dialogue or provide further information if necessary.

Yours sincerely,



PETER ANDERSON
Acting Chief Executive
peter.anderson@melb.acci.asn.au