



Lobbying Disclosure Reform

Response to the Exposure Draft
Lobbying Code of Conduct

Presented to
Australian Government
Department of Prime Minister and Cabinet

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Introduction

Springboard Australia is a leading-edge consulting company with more than 20 years of experience in high-level corporate strategy, reputation management, communications, and public affairs and issues management.

We assist our clients with a full range of services to protect and grow their reputation, relationships and business. In doing so, we regularly assist clients with their engagement and relationships with governments, including lobbying on their behalf.

Adhering to the highest ethical standards is not only our fundamental belief but also a key reason for our success.

As the Draft Lobbying Code of Conduct notes, lobbying is a legitimate activity and an important part of the democratic process. There is a myriad of examples where appropriate lobbying - or dialogue between government, Parliamentarians, the private sector and community - has resulted in better public policy and improved outcomes for all concerned.

Therefore, we welcome the opportunity to provide comments on the Australian Government's Exposure Draft Lobby Code of Conduct.

First, we want to congratulate the Government for seeking more transparent procedures to promote trust, integrity and honesty in the political and public policy environment as well as the government process.

The draft Lobbying Code of Conduct is a significant step forward.

However, important additional reforms could be incorporated to better achieve the desired outcome of enhanced transparency, public confidence and integrity.

These are:

- the need give the Code of Conduct legislative force;
- expansion of its application to cover all Members of Parliament;
- changes to definitions relating to lobbyists and lobbying activities; and
- expansion of the reporting requirements.

Our proposals are detailed below.



Providing Legislative Force

While a “code of conduct” is designed to be a guide or reference, unfortunately, in our recent parliamentary and political history the enforcement of such codes has been so flexible as to often render them meaningless.

To ensure public confidence, standards of professional conduct should be mandated by an Act of the Parliament, complete with enforceable penalties for failure to comply.

Similar legislation in the United States imposes a civil penalty of up to \$200,000 and a possible criminal penalty of up to five years imprisonment.

Covering All Members of Parliament

Whether the Draft Code of Conduct is implemented simply as a code or given legislative force through a Act of Parliament, any such new procedures, guidelines, or laws should not be an initiative of the government-of-the-day, but rather of the Parliament.

The disclosure of lobbying activities however defined, should apply to all Members of Parliament, not just the Executive Branch as outlined in the current Draft Code of Conduct. We believe lobbying of the Opposition to be subject to similar disclosure as lobbying of the Government. The public equally has a right know by whom, and how, the alternative Government of Australia is being lobbied and potentially influenced as it formulates 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.

AS a result, we believe the responsibility for maintaining the Register of Lobbyists should not be vested with the Secretary of the Department of Prime Minister and Cabinet as proposed in the Draft Code of Conduct, but with the Clerks of the House of Representatives and Senate and/or a Joint Parliamentary Committee. Thus, it would operate in a similar fashion to the current Committee of Members’ Interests.



Expanding the Definition of Lobbyist and Lobbying Activities

We believe the "definitions" set out in the current Draft Code of Conduct are too narrow and would permit a wide range of lobbyists and lobbying activities to operate without the need for registration or disclosure.

Defining "Client" to include ALL lobbyists

Most critically, the Draft Code of Conduct, by its limited "client" definition, appears to exclude an extensive list of individuals who advocate or lobby on behalf of the companies or organisations for which they are directly employed. These "in-house" lobbyists would not be required to register or comply with any proposed new code or legislation. This is a significant omission that does not recognise the level and extent of lobbying undertaken by personnel on behalf of their employer. Under the draft, the vast numbers of staff employed to lobby on behalf of some of Australia's largest companies - like BHP-Billiton, Telstra or the Commonwealth Bank - would not need to register or comply with the code or legislation.

For that reason, the definition of "client" should be expanded to include:

"any person or entity that employs or retains another person for financial or other compensation, reward or gift to conduct lobbying activities on behalf of that person or entity"

AND

"a person or entity whose employees act as lobbyists on its own behalf"

To ensure transparency and maintain public confidence in the integrity of the political and government process, all individuals and entities undertaking lobbying activities must be covered by any new procedure.

Disclosing lobbying of the entire legislative branch

As noted above, the Draft Code of Conduct and any proposed legislative reform should be expanded to incorporate not just a "Government representative" but the entire legislative arm of the Australian Parliament. This would ensure that lobbying of the Opposition, the alternative Government of Australia, as well as all other Members of Parliament is publicly known and disclosed.

Broadening the definition of "lobbying activities"

In line with the recommendation above, the definition of "lobbying activities" should include communications with a Member of Parliament to influence parliamentary decision-making as well as Government decision-making.

Also included should be any communications regarding the nomination, appointment or confirmation of a person to a significant parliamentary or government position.

The exclusion of “petitions or communications of a grassroots campaign nature in an attempt to influence a Government policy or decision” from the definition of lobbying activities, also may reduce the full disclosure of lobby activities undertaken by individuals and/or entities. Increasingly, individuals or entities seek to generate or organise “grassroots” campaigns to influence policy deliberations and outcomes as a deliberate lobbying activity. The increased ability to build such “grassroots” campaigns, particularly through online methods, also should be captured by any new procedures.

This may be achieved by expanding the definition of “lobbying activities” to include: “the preparation and planning of activities, research and other background work that is intended for use to contact Members of Parliament or the Government and/or coordinating the lobbying activities of others.”

Defining “Lobbyist” to capture ALL those who seek to influence Parliamentary and Government activity

In defining “Lobbyist”, the Exposure Draft excludes a very significant and influential group of organisations and individuals who actively and successfully influence parliamentary activity and government decision making.

Under exclusion (a) a very substantial number of Australian entities and institutions would be excluded from any new procedures including such organisations churches, universities and welfare agencies. These organisations have a long and successful history of influencing government policy and their activities should also be available for public scrutiny.

Exclusion (b) cuts out an even more influential group of organisations, most notably, industry associations whose principle purpose and activities are to lobby the Parliament and government. One of the most obvious demonstrations of the critical importance lobbying plays to these industry associations is the growing number of national offices being located in Canberra. A quick scan of these industry associations’ websites or charters reveals the role important lobbying plays. For example, the Australia Medical Association (AMA) website says the AMA exists to “*preserve and protect the political, legal and industrial interests of medical practitioners*” and it will do so by “*acting as the principal co-ordinating and lobbying body for the medical profession*”.

Similarly, trade unions appear to be excluded under this provision.

The lobbying activities of industry associations, trade unions and other such bodies should be transparent, public and open to scrutiny.

Finally, the non-application of the Code and non-registration requirement for any person, company or organisations lobbying on their own behalf from a narrowly defined client, as noted above, leaves a gaping whole in the current proposal. Not only does it exclude the very large and growing number of “in-house” lobbyists, it excludes influential and often powerful individuals with direct access to Parliamentary and Government decision makers from making public their lobbying activities.

Under the current proposal, for example, a James Packer or any of his employees, could directly lobby the Prime Minister or other Ministers on behalf of his gambling or casino interests and would not be required to declare that activity.



Such a flawed system would not instill community confidence and integrity in the parliamentary or government decision making processes.

Expanded Reporting Requirements

As recommended above, the Register of Lobbyists and associated matters should be the responsibility of the Parliament not the Secretary of the Department of Prime Minister and Cabinet.

Additionally, we believe the information contained on the Register of Lobbyists should be expanded to provide further information about the activities of lobbyists.

As well as providing business details, employees or agents and names of clients in each of the regular reports, lobbyists should be required to provide more information on the specific issues on which they have been lobbying.

Lobbyists should be required to regularly provide 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 list of Bills, Acts, policies, programs, contracts, grants, regulations or appointments about which lobbying has occurred.

Providing this level of reporting on a regular basis, would ensure transparency and would ensure contact between lobbyists and parliamentary and government representatives is conducted in accordance with public expectations of integrity and honesty.

Conclusion

Again, we want to congratulate the Government for seeking more transparent procedures to promote trust, integrity and honesty in the political and public policy environment as well as the government process.

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However, important additional reforms could be incorporated to better achieve the desired outcome of enhanced transparency, public confidence and integrity.

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About Springboard Australia

Springboard Australia is a leading-edge consulting company with more than 20 years of experience as high-level corporate strategy, reputation, communications, public affairs and issues management specialists.

We assist our clients to protect and grow their reputation, relationships and business.

Springboard Australia provides a complete range of consultancy services from media relations and corporate communications to issues management, political strategy and government affairs.

Our specialties include:

-  Political consulting
-  Government relations
-  Media strategy, relations and training
-  Issues and crisis management
-  Corporate communications
-  Community and public education campaigns
-  Internet strategy and web design
-  Community relations
-  Research

Further details of our services, including case studies of our work, can be found at:

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