

13 June 2008

Mr Stephen Palethorpe  
Secretary  
Standing Committee on Finance and Public Administration  
The Senate  
Parliament House  
CANBERRA ACT 2600

Dear Mr Palethorpe

### **INQUIRY INTO THE LOBBYING CODE OF CONDUCT**

Thank you for providing the opportunity to make a submission to the above Inquiry.

My comments, within this submission, are framed by my experience as the proprietor of a niche consultancy and with nine years recent experience as a Government Media Adviser, Senior Adviser and Chief of Staff with routine contact with lobbying companies, associations and their clients.

The Next Level Consulting Services is not currently engaged in advocacy, but could do so in the future. The company has a commercial relationship with a registered lobbyist, Open Door Consulting, but we are not acting on their behalf.

#### Summary of our Response to the Proposed Code and Register

The Next Level Consulting Services is supportive of the need for ethical and professional advocacy and proper scrutiny of public policy and legislative decision making. However, our submission contends that the Code of Conduct and the Register:

- is unlikely to adequately address the egregious acts of improper influence undertaken by a minority;
- does not sufficiently encompass the full range of "lobbying" activities and organizations to make it an effective, fair and transparent system.
- has exemptions that are too broad and provide alternative conduits for the very behaviour the code and register are intended to deter;

- is not able to be adequately enforced across the spectrum of Executive and Parliamentary activities to make it an effective tool for creating the transparency that is intended;
- cannot adequately govern the activities of past MPs and Senators; and
- can adversely affect reasonable commercial confidentiality of honest clients, who are not currently involved in any lobbying process.

The Next Level Consulting Services submits that attempting to regulate the sector through a registration process, rather than improving the standards of interaction between the lobbying and public sectors, is a generally flawed approach.

### Good Professional Advocacy is a Public Good

Professional advocacy is a worthy activity and, given the increased complexity of public policy, can constructively contribute to a vibrant pluralistic democracy.

Given the increasing complexity of Government there is a growing need and demand for professional and experienced people to assist a range of clients with their engagement with Government and the public. A strong, ethical and vibrant advocacy sector should be encouraged - not deterred.

Most individuals do not and should not require professional advocacy support and should be able to rely on their MPs and Senators, particularly where issues are individualised and/or localised. Good advocacy organisations should appraise their potential clients of this point from the outset.

However, the scope of government activity and the complexity and value of some issues often go beyond the capacity of single member representation. They can be cross-portfolio issues and the increased demand for “whole of Government” governance requires whole of government advocacy. The nature of public policy development and the passage of bills through the Parliament, and indeed the application of regulation by statutory authorities, mean that effective and professional advocacy is likely to have a greater and beneficial role into the future– if managed properly.

The very act of informing enough MPs and Senators of an important issue can require the services of an advocate as a more economical process for business and organisations than expending in-house resources that are otherwise intended to meet the needs of core business.

Given the scope of issues they face, MPs, Senators and Ministers often appreciate a well crafted synopsis and presentation of complex issues to help them properly consider all aspects of the issue at hand.

After nearly 10 years of routine industry contact, in my experience lobbyists have generally been professional in their conduct. At their best, lobbying organisations value added to the proper consideration of a range

of public policy considerations by presenting their clients' cases in a succinct and relevant manner. Given the declared interest of the advocate and their clients, most matters could be considered with proper regard to the probity of decision making.

Good advocacy also improved consideration of specific issues and bills, to the broader public interest. Appropriate engagement with advocacy organisations should be seen as a routine part of proper consultation.

None of this is to suggest that there are no problems, and it would be naïve to suggest that there are not some lobbyists who do or might act inappropriately. However, in my experience, if there is a recurrent issue in the sector, it is not that good firms exerted improper influence, but that many poor lobbyists charge clients considerable sums of money and made little meaningful contribution to Government's consideration of what were often complex and important issues.

Care needs to be taken to ensure this narrow Register does not suggest a de-facto endorsement of legitimacy and quality of a consultancy. Not all registered consultants will necessarily be effective.

While the sector overall is not the problem, it is to the sector's advantage to cooperate with any reasonable effort to reduce the influence of a deleterious minority. It should be noted, though, that it takes "two to tango", and a lobbyist seeking to buy influence can only do so where there is a decision maker willing to trade.

In my view, a Register and Code is unlikely to mitigate the risk of corrupt behavior by the few decision makers prone to improper influence and given the widespread exemptions.

#### The risk lies with decision makers rather than the proper act of lobbying

Since the risk at issue is the risk of decision makers making determinations improperly, measures to mitigate this risk should be directed at disclosure of the acts of decision makers themselves.

The draft Code does guide the actions of Ministers and officers. However, as other submitters have noted, there is a weakness if it does not apply to the entire legislature, cannot be enforced and if there are too many exemptions.

The Next Level Consulting Service does not believe the measures can be adequately applied to all MPs and Senators and could effectively be unenforceable in the Parliament. The extensive nature of contact with MPs and Senators and the imprecise nature of "lobbying" provide too much opportunity for obfuscation. We agree, generally, with the cautionary advice in the submission by the Clerk of the Senate.

Ultimately, concern that the Executive and MPs are open to improper influence are more properly addressed by a corruption watchdog and MP

disclosure of such things as *their* meeting diaries rather than publicly listing a Register of Lobbyists and their clients.

Similarly, there is a greater risk of improper influence arising from big ticket fund raising functions than the day to day interaction with professional advocates yet attendance at these is not subject to disclosure.

### Exemptions

The Next Level Consulting Services supports other submissions that point to the weakness in the Code and Registration caused by widespread exemptions from the process

In particular the exemption of industry associations and Trade Unions leaves bodies with quite substantial resources and influence untouched.

Trade Unions no longer simply exercise influence over specific workplace issues through supporting the election of a Parliamentary wing. Unions exert considerable influence financially and across a range of economic and social policy issues including such issues as superannuation policy (where they often have direct interests), child care and, from time to time foreign and trade policy. They exert influence over preselection, policy making bodies and election funding for one major party. They are routinely appointed to statutory bodies and boards. So extensive is their potential to trade on influence – beyond their stated purpose and community representation – that they warrant more scrutiny than the lobbying sector.

Similarly, Church based and other major charitable groups cannot be assumed to be free of corruptible influences and given the scope of activities and their sometimes passionate interest in important social, medical and moral issues, and the importance of third party endorsement in the political process their activities should be in scope of these measures.

While professional associations like the CPA are respectable and, on the whole, make a positive contribution, I do not support the CPA's position that bodies like theirs should be exempted from registration. The scope for third party benefit, behind the veil of "member benefit" is too great. The general principle should be to deal with acts of improper advocacy and lobbying rather than trying to define the scope based on organisational type. Regardless of the central object of such associations, the totality of their lobbying efforts requires they be covered by the subject measures.

There is also a growing trend toward third party advocates and campaigners whose "grass roots" appearance can mask highly organised and powerful lobbying and political influence. Organisations such as "Get Up" can have a far greater ability to influence policy than any lobbying company, yet the main players and the interests they represent are kept

deliberately unclear to foster a veneer of “grass roots” campaigning. Given their potential electoral influence there is an imperative that they be covered by the scope of the subject measures also.

The exemption of in-house lobbying provides a distinct lobbying advantage to large corporations over SMEs, who often can't afford in-house government relations. Importantly, this accentuates the fact that these measures are not directed at the act of lobbying and improper influence per se, but to an unreasonably narrow part of the sector.

There is no difference in the activities offered by an in-house government relations consultant and a contracted consultant who might offer the same services on a project basis to a client or group of clients. By trying to target certain players rather than specific behaviour, the measures are misdirected.

In my experience, sector or industry associations and in-house government relations staff were not better or more professional or more honest than external government relations consultants. Some individuals routinely move between associations, consultancies and in-house appointment. That is, they are often the same people.

The significant number of exemptions from disclosure simply accentuates the risk that the measures are targeting the wrong people or such a small part of the overall advocacy effort to make them ineffective.

Conversely, it is reasonable to wonder whether a process that necessarily should include so many bodies and people in the act of lobbying would be workable. That suggests that a framework based on a code and public register might not actually be the best way to deal with the important issues at stake.

### A better framework

The Next Level Consulting Services supports reasonable efforts by the Government to improve the nature of relations between advocates and Government. It is a maturing sector that is here to stay and can play a constructive role in public policy development. We strongly support any effort to rid the sector of improper conduct as a necessary measure to improve public confidence in the process.

The Next Level Consulting Services suggests an alternative framework based on accreditation, a voluntary Advocacy Code of Conduct and training of both the sector and the decision makers. The Next Level Consulting Services would like to positively engage with Government, the Committee and the Presiding Officers to suggest an alternative or additional approach through a proposed *Ethical Advocacy Association of Australia* that will, over the longer term, improve conduct and professionalism in the lobbying sector to the benefit of the Government and Parliament.

This organisation would provide a more discrete but targeted information source about specific activities of its members and their clients, when required – as an alternative to the blunt instrument of public listing. A more comprehensive and targeted record can provide better surety to Government and officers, that the particular advocates they are dealing with are professional.

Membership of a proposed body like *Ethical Advocacy Association of Australia*, would also assist clients who see ethical and professional advocacy on their behalf as an important element in the service they are seeking.

This alternative framework would complement measures within Government and the Parliament to improve their own conduct for an overall better outcome than the current measures and set a better foundation for the future.

Concern about improper activities is shared by both the public sector and the industry. Given the impacts and benefits for both the sector and the Government, a partnership arrangement in further developing this concept would be preferable to a standalone industry association.

There are a number of precedents for the Government to seed and support such bodies in the broader public interest.

### Conclusion

The proposed measures only go a small way toward providing scrutiny over the basis of decision makers determinations and by having such broad exemptions and given issues of applicability across the legislature, the current proposed framework is at best a “veil of respectability”.

Should the Government continue with the current framework, The Next Level Consulting Services believes it should remove the broad range of exemptions from the Register and, in addition, prescribe full disclosure for a range of proxy activities such as high expense fund raising dinners

We recommend an alternative approach that seeks to improve the sector and the nature of its engagement with government in a partnership venture to establish an *Ethical Advocacy Association of Australia*.

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