Chapter 2

Issues

2.1 The committee received evidence from a range of organisations which were generally supportive of the Lobbying Code of Conduct (the Code) and the Register of Lobbyists (the Register). The Accountability Round Table was typical of most submitters in saying that:

> The Lobbying Code of Conduct has been an important first step towards achieving transparency, integrity and honesty in the conduct of lobbying.[1]

2.2 Lobbying firms in general were supportive of the Code and the Register and believed 'that they have contributed to good governance in the industry and provide greater transparency'.[2] Government Relations Australia, for example, submitted that:

> We believe the last three years indicate that the Code and associated Register have been highly effective in achieving their objectives. In our experience, the obligations of the Code are taken seriously by both government relations practitioners and government personnel in terms of ethical standards as well as the high level of compliance with disclosure obligations.[3]

2.3 The Department of the Prime Minister and Cabinet (the department), which has responsibility for administration of the Code and the Register, commented that it is operating effectively and that compliance with the registration process requirements has been high.[4] Mr David Macgill, the Department of the Prime Minister and Cabinet, went on to comment:

> I think the register operates effectively. I think lobbyists generally are happy with the response that the department provides them as in the turnaround for registration and updates of clients. I know that some of the people at the roundtable meeting expressed their appreciation of the way the Commonwealth administers the scheme.[5]

2.4 Mr Les Timar, Government Relations Australia, also commented that the current scheme works effectively and any moves to significantly change the operation

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1 Accountability Round Table, *Submission 8*, p. 1.

2 Kreab Gavin Anderson, *Submission 9*, p. 1. See also Profile Management Consultants, *Submission 2*, p. 1; Government Relations Professionals Association, *Submission 6*, p.1; Government Relations Australia, *Submission 10*, p. 2; Public Relations Institute of Australia, *Submission 12*, p. 1.

3 Government Relations Australia, *Submission 10*, p. 2.

4 Department of the Prime Minister and Cabinet, *Submission 16*, p. 3.

5 Mr David Macgill, Assistant Secretary, Department of the Prime Minister and Cabinet, *Committee Hansard*, 21 February 2012, p. 5.

and administration of the Code could upset the current balance between transparency and the burden of compliance. Mr Timar stated:

> I am reasonably well aware of the various models that operate around the world, and I absolutely recognise that the Australian government has a choice as to how heavy handed, if you will, the regulatory regime in Australia is going to be. This code that was introduced in 2008 is, in our estimation, an effective piece of regulation that is achieving the end that it was designed to achieve. Of course, there are other models that are possible. I take the view that in terms of the balance between public accountability and transparency on the one hand and the issue of the free flow of information between the government and non-government sectors as well as what you might call the compliance burden on the other, the current regime that the Australian government has in place is a good regime.[6]

2.5 The committee also received evidence from a number of individuals and organisations which were supportive of the Code but desired a more intense model of regulation, including so called 'coverage' issues and disclosure of private meetings. Many of the matters raised were similar to those canvassed in the committee's previous report.

2.6 Changes suggested by submitters included:

- strengthening the Code by enshrining it in legislation;[7]
- administration and enforcement of the Code by an independent body;[8]
- expanding the Code to cover independent and opposition members of parliament as targets of lobbying; and
- harmonisation of Commonwealth and state lobbyist registers and codes.[9]

2.7 There were a variety of views put forward by submitters on post-employment prohibitions for members of parliament and government officials regarding lobbying. Many lobbying organisations felt that these provisions were unduly harsh whilst the

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6 Mr Les Timar, Managing Director, Government Relations Australia, *Committee Hansard*, 21 February 2012, p. 10.

7 See for example Mr Bob Such MP, *Submission 1*, p. 1; Queensland Integrity Commissioner, *Submission 7*, p. 12; Mr Guy Barnett, *Submission 14*, p. 1; Australian Greens, *Submission 17*, p. 4.

8 See for example Mr Bob Such MP, *Submission 1*, p. 1; NSW Greens Political Donations Research Project, *Submission 5*, p. 9; Australian Council on Smoking and Health (ACOSH), *Submission 11*, pp 2–3; Australian Greens, *Submission 17*, p. 4.

9 See for example Action on Smoking and Health Australia, *Submission 3*, p. 3; Queensland Integrity Commissioner, *Submission 7*, p. 12; Accountability Round Table, *Submission 8*, pp 3—4.

Accountability Round Table and others recommended that these provisions be strengthened.[10]

Coverage of lobbyists

2.8 As identified in the committee's previous inquiry into the Code, 'the definition of "lobbyist" lies at the heart of the Code because this determines who will be affected by its application'.[11] The Code applies to third-party lobbyists and defines a lobbyist as:

> ...any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client.[12]

2.9 This is the very rationale for the Code as outlined in the statement made by the then Special Minister of State, Senator the Hon John Faulkner, upon the establishment of the Code in 2008:

> The objective of the code is not to make every company whose staff or executives visit a Minister sign a register. Rather it is to ensure Ministers and other Government representatives know whose interests are being represented by lobbyists before them and to enshrine a code of principles and conduct for the professional lobbying industry.[13]

2.10 The Code therefore excludes the following individuals and organisations from the definition of lobbyists:

- charitable, religious and other organisations that are endorsed as deductible gift recipients;
- non-profit associations or organisations constituted to represent the interests of their members;
- individuals making representations on behalf of relatives or friends about their personal affairs;
- members of trade delegations visiting Australia;
- registered tax agents, Customs brokers and other persons who are registered under an Australian government scheme regulating members of that

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10 See for example Action on Smoking and Health Australia, *Submission 3*, p. 3; Hawker Britton, *Submission 4*, pp 12–13; Government Relations Professionals Association, *Submission 6*, p. 4; Accountability Round Table, *Submission 8*, pp 11–13.

11 Senate Standing Committee on Finance and Public Administration, *Knock, knock... who's there?: The Lobbying Code of Conduct*, September 2008, p. 6.

12 Australian Government, *Lobbying Code of Conduct*, June 2011, section 3.5, http://lobbyists.pmc.gov.au/docs/code_conduct.pdf (accessed 15 February 2012).

13 Senator the Hon John Faulkner, Special Minister of State and Cabinet Secretary, *Senate Hansard*, 13 May 2008, p. 1511.

profession, provided that their dealings with government are part of the normal day-to-day work of people in that profession;

- members of professions such as doctors, lawyers or accountants who make occasional representations to government on behalf of others in a way that is incidental to the provision to them of their professional services; and
- any person or organisation engaging in lobbying activities on their own behalf rather than a client.[14]

2.11 While a number of submitters desired an expansion of the Code to include all organisations who 'lobby' government, little evidence was provided to support the contention that there was a need for this substantial change in policy.

2.12 There was some concern, however, that the current arrangements excluded some organisations that effectively lobby on behalf of third parties but are not registered due to the exemption for the provision of professional services.

2.13 It was claimed that these organisations regularly promote the interests of their clients directly to both government and senior official levels but are not required to be registered.[15] Lobbying firm Profile Management Consultants considered this to be an oversight that should be corrected as it considered in many cases the professional service firms 'operate effectively as competitors to our firm'.[16]

2.14 Government Relations Australia also commented on this issue and stated that 'we think one area of improvement would be to modify the Code such that all parties seeking to interact with government clearly understand that its basic ethical standards apply to them'.[17] Mr Timar, Government Relations Australia, explained further:

> We clearly as a firm describe ourselves as a government relations firm and we are absolutely covered under the code and are happy to be covered under the code. What I am getting at is that there are other consultants or indeed other kinds of professional service firms who say, 'Well, we are not a lobbyist and therefore we will not register under the code,' even though in a practical sense, in an activity sense, they are engaging with government on behalf of a client and seeking to influence a government decision. I cannot for the life of me see what the distinction is between what that consultant is doing and what my firm is doing.[18]

2.15 Mr Timar concluded:

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14 Australian Government, *Lobbying Code of Conduct*, June 2011, section 3.5.

15 Profile Management Consultants, S*ubmission 2*, p. 1; Kreab Gavin Anderson, *Submission 9*, p. 4.

16 Profile Management Consultants, S*ubmission 2*, p. 1.

17 Government Relations Australia, *Submission 10*, p. 2.

18 Mr Les Timar, Managing Director, Government Relations Australia, *Committee Hansard*, 21 February 2012, p. 11.

> If the nature of the contact or the representation that that expert consultant is making is to influence a government decision or a policy setting then I think that is exactly what they are doing and that that does not really have any distinction with the sort of work that we do.[19]

2.16 While there were a number of submissions arguing for a dramatic expansion of the regulatory scope of the Code, the committee believes that the arguments against this are compelling, while the case for such a substantial regulatory expansion was lacking.

2.17 The Public Relations Institute of Australia (PRIA) opposed expanding the definition of lobbyist in the Code to include in-house lobbyists. It stated:

> PRIA strongly supports the exclusion of in-house lobbyists from the requirement to register.
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> In-house lobbyists can be found in government relations, public relations, public affairs or corporate affairs roles in multinationals, Australian companies and the not-for-profit sector. Lobbying functions are also performed by directors and other senior executives.
>
> PRIA does not believe, given that it is clear whose interests they represent, that a requirement for in-house lobbyists to be listed on a register would provide additional transparency. It is the transparency of lobbyists' motivations and position around the table when propositions are being discussed which should be ensured through the disclosure of whom they represent.[20]

2.18 Mr Les Timar, Government Relations Australia, also commented on the application of the Canadian system to Australia and stated:

> In my view, based on my understanding of the Australian system and the way the industry works here, I would suggest that grafting the Canadian system on to Australia would represent serious overregulation. I think there would be some very significant risks from a public interest point of view in going down that track which I would be happy to go into further if you would like me to.[21]

2.19 Mr Timar went on to stated further:

> ...if that much more heavy regulation approach were introduced, it would have to apply—as indeed it does in Canada—to every non-government interest. So it would not simply be government relations firms; it would need to apply to the in-house practitioner within a corporation or organisation, it would need to apply to the CEO and senior executives

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19 Mr Les Timar, Managing Director, Government Relations Australia, *Committee Hansard*, 21 February 2012, p. 11.

20 Public Relations Institute of Australia, *Submission 12*, p. 2.

21 Mr Les Timar, Managing Director, Government Relations Australia, *Committee Hansard*, 21 February 2012, p. 13.

> within that corporation who engage with government, it would need to apply to the industry association, to the not-for-profit organisations et cetera. So it would massively expand the reach of the regulatory arrangements. In terms of the chilling effect that I referred to, companies would give a second thought to engaging with, or frankly not seek to engage with, government in certain circumstances where it believed it was running the risk of prejudicing its own commercial interests by so engaging...I would ask you the question: in the circumstance that the full details of a particular meeting between a non-government and a government party were required to be registered and published, would that company bother doing that in those particular circumstances? I think that would be to the cost of government and therefore to the public interest.[22]

2.20 In response to calls for an expansion to coverage of the Code and Register, the department noted that the government's rationale for the Code and Register are set out in the ministerial statement of May 2008. As such, the 'Code focuses on transparency in the third-party lobbying sector, rather than in-house lobbyists working for companies, on the basis that it is clear whose interests they represent'.[23] The department concluded:

> As far as the government is concerned, the problem that was to be addressed by the Lobbying Code of Conduct and register has been addressed, and that is that government representatives must be able to know whose interests are being pushed, if you like, when they have meetings with lobbyists.[24]

2.21 In addition, the department indicated an expansion of the definition of lobbyist would significantly increase the number of entities listed on the Register to around 5,000 lobbyists.[25] The department additionally stated that an expanded lobbyist register would impose a greater administrative load and require significant upgrades in computer equipment and systems.[26] By way of example, the department informed the committee that the Canadian Commissioner of Lobbying has a staff of around 28 and a budget of $4.5 million.[27]

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22 Mr Les Timar, Managing Director, Government Relations Australia, *Committee Hansard*, 21 February 2012, p. 14.

23 Department of the Prime Minister and Cabinet, *Submission 16*, p. 1.

24 Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch, Department of the Prime Minister and Cabinet, *Committee Hansard,* 21 February 2012, p. 4.

25 Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch, Department of the Prime Minister and Cabinet, *Committee Hansard,* 21 February 2012, p. 1.

26 Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch, Department of the Prime Minister and Cabinet, *Committee Hansard,* 21 February 2012, p. 1.

27 Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch, Department of the Prime Minister and Cabinet, *Committee Hansard,* 21 February 2012, p. 6.

Post-employment prohibitions

2.22 As part of the amendments to the Code announced in August 2011, the government introduced the requirement that lobbyists must disclose on the Register the details of any former government representative employed by their firm.[28] The purpose of the government's amendment was to enhance openness and transparency.[29]

2.23 The Code additionally prohibits certain people from engaging in lobbying activities for a period of 12 months after they cease their employment on matters that they had official dealings with in their last 12 months of employment. The prohibitions apply to:

- persons employed in the offices of ministers or parliamentary secretaries at the Adviser level or above;
- members of the Australian Defence Force at Colonel level or above (or equivalent); and
- Agency Heads or members of the Senior Executive Service (or equivalent).[30]

2.24 Former ministers and parliamentary secretaries are restricted from lobbying for a period of 18 months on matters which they dealt with in the final 18 months of their service. Ministers and parliamentary secretaries are also subject to greater restrictions under the Commonwealth Government's *Standards of Ministerial Ethics*.

2.25 Submitters were divided over the issue of post-employment restrictions on lobbying. The Accountability Round Table and the Australian Greens advocated strengthening the post-separation employment provisions of the Code whilst lobbying organisations such as the GRPA and Government Relations Australia argued the contrary view: that the current restrictions are excessive and restrictive to former ministers and staff.[31]

2.26 The committee is of the view that there should be no further restrictions placed upon former ministerial staff or former ministers.

2.27 The committee is also of the view that some submissions put too much emphasis on 'personal contacts' and the possibility of these influencing decisions at the Commonwealth level.

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28 Australian Government, *Lobbying Code of Conduct*, June 2011, section 5.1.

29 Mr Gary Gray, Special Minister of State for the Public Service and Integrity, 'Changes to Lobbyists Register', *Media Release*, 1 August 2011. See Department of the Prime Minister and Cabinet, *Submission 16*, Attachment 4, p. 1.

30 Australian Government, *Lobbying Code of Conduct*, June 2011, sections 7.1 and 7.2.

31 Accountability Round Table, *Submission 8*, p. 6; Australian Greens, *Submission 17*, p. 8; Government Relations Professionals Association, *Submission 6*, p. 4; Government Relations Australia, *Submission 10*, p. 3.

2.28 While keeping a watch on these issues is important, experiences that have been derived from the state or local level should not necessarily guide regulation at the Commonwealth level, where no need for such has been demonstrated.

Harmonisation of Commonwealth and state lobbyist registers

2.29 Of concern to some submitters was the duplication and overlap of the Commonwealth and state lobbying registers.[32]

2.30 This issue is not one that concerned the committee. It is entirely appropriate that different jurisdictions develop schemes, regulations and arrangements that reflect the differing needs and priorities of states, territories and the Commonwealth.

More frequent updates of the register

2.31 The Code currently requires lobbyists to ensure that their details are up-to-date on the Register within 10 business days of 31 January and 30 June every year.[33] Lobbyists are also required to ensure that any changes to their details are updated on the Register within 10 business days of any change occurring.[34]

2.32 As announced in August 2011, the government reduced from four to two the number of times that lobbyists are required to update their details per year. The department submitted to the committee that:

> The streamlining of the administrative arrangements to require reporting twice yearly was intended to make the Commonwealth Register more user-friendly while retaining its ongoing integrity...This change has not resulted in any diminution of the integrity of the Register because the requirement for lobbyists to update their entry on the Register within 10 business days of any change to their details remains in place.[35]

2.33 The Accountability Round Table raised concerns over this change and stated that the reduction in annual reporting means that 'the provision of changes of details to the Register may be "overlooked" for up to 6 months and transparency in that area reduced'.[36] The Accountability Round Table recommended that the Code revert to the quarterly reporting requirement. It argued that with the use of modern technology, the Internet and the fact that appointment details are already recorded in diaries should ensure that the reporting burden is slight.[37]

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32 Action on Smoking and Health Australia, *Submission 3*, p. 3; Kreab Gavin Anderson, *Submission 9*, p. 4; Government Relations Professionals Association, *Submission 10*, p. 4; Public Relations Institute of Australia, *Submission 12*, p. 5.

33 Australian Government, *Lobbying Code of Conduct*, June 2011, sections 5.5–5.6.

34 Australian Government, *Lobbying Code of Conduct*, June 2011, section 5.4.

35 Department of the Prime Minister and Cabinet, *Submission 16*, p. 2.

36 Accountability Round Table, *Submission 8*, p. 4.

37 Accountability Round Table, *Submission 8*, p. 11.

2.34 In contrast to the view put forward by the Accountability Round Table, Government Relations Australia found the compliance burden associated with the Register 'is significant but manageable'.[38]

2.35 The Queensland Integrity Commissioner informed the committee that the reduction in the number of annual reporting times is 'not a matter of huge substance'.[39]

Procedural fairness

2.36 Since the establishment of the Code on 1 July 2008, the department has had responsibility for its administration. The Secretary of the department is vested with the power to remove lobbyists from the Register if they have:

- contravened any of the terms of the Code;
- provided incorrect details on the Register; or
- failed to up-date their details on the Register within the specified time periods.[40]

2.37 The Special Minister of State for the Public Service and Integrity, in their absolute discretion, may also direct the Secretary to remove a lobbyist from the Register.[41]

2.38 The department informed the committee that to date, the Secretary has not exercised his power to remove a lobbyist from the Register.[42] The department commented that in its opinion as administrators of the Code 'that compliance with the registration process requirements has been high, with only a small percentage of applications requiring follow up'.[43] However, one lobbyist had been found to be in breach of the Code for failing to update the list of clients. In that case, the Secretary wrote to the company involved and reminded them of their obligations.[44]

2.39 Evidence received by the committee raised a range of concerns in relation to the sanction provision. Some submitters viewed the current arrangements as unenforceable. It was also stated that the penalty of removal from the Register is a 'blunt instrument'. The Accountability Round Table stated:

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38 Government Relations Australia, *Submission 10*, p. 2.

39 Dr David Solomon, Queensland Integrity Commissioner, *Committee Hansard*, 21 February 2012, p. 19.

40 Australian Government, *Lobbying Code of Conduct*, June 2011, section 10.2.

41 Australian Government, *Lobbying Code of Conduct*, June 2011, section 10.4.

42 Department of the Prime Minister and Cabinet, *Submission 16*, p. 3.

43 Department of the Prime Minister and Cabinet, *Submission 16*, p. 3.

44 Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch, Department of the Prime Minister and Cabinet, *Committee Hansard*, 21 February 2012, p. 5.

> ...it is up to those who are lobbied to police the system and enforce it. The instrument they are given is a blunt one. Unless the breach is in fact very serious, or there is a significant pattern of non-compliance, it is unlikely that registration will be taken away. The Secretary and Special Minister of State who exercise the discretion will also always be open to challenge on the basis of possible lack of independence and impartiality because they or their colleagues are parties in the "government processes" the subject of lobbying.[45]

2.40 There was a call for graduated sanctions and public reporting of breaches.[46]

2.41 Government Relations Australia supported graduated sanctions: while noting that deregistration may be appropriate for serious misconduct, it argued that there will be other instances of inadvertent or unintended noncompliance where a warning or other measure (such as 'probation') would be the proportionate response, particularly where the firm or individual has a solid track record of compliance.[47]

2.42 The committee notes that this matter was raised during the roundtable discussions with the minister and stakeholders in 2010.

2.43 The lack of a right of appeal and independent scrutiny of decisions was canvassed in submissions.[48] Government Relations Australia for example, commented that currently there are very limited avenues for an affected party to appeal a decision to not register or to deregister a particular lobbyist other than potentially the Federal Court or High Court.[49] It was suggested that either the Commonwealth Ombudsman or the Administrative Appeals Tribunals could provide review of relevant decisions on both the merits and at law.

2.44 In responding to the concerns about sanctions, Mr Macgill, Department of the Prime Minister and Cabinet, informed the committee:

> There is not just one form of sanction. The code says that a lobbyist may be removed for a breach but that does not mean that any breach results in removal...
>
> I do not think a tiered system needs to be spelt out. Depending on the nature of the breach we would go so far as to recommend to the minister that a lobbying firm be removed; for a lesser breach we would recommend something lesser...A suspension for three months, for example. The lobbying firm would not be able to lobby for that period. We have not had

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45 Accountability Round Table, *Submission 8*, p. 6; see also Australian Greens, *Submission 17*, p. 7.

46 See for example, Accountability Round Table, *Submission 8*, p. 15; Australian Greens, *Submission 17*, p. 7.

47 Government Relations Australia, *Submission 10*, p. 3.

48 See for example, Mr Guy Barnett, *Submission 14*, p. 1; Australian Greens, *Submission 17*, p. 7.

49 Government Relations Australia, *Submission 10*, p. 3.

> to consider these issues because the only breach that we are aware of was one where we thought that a letter reminding the company of its obligations was sufficient.[50]

2.45 The department also commented on the possible reporting on the Register website of breaches of the Code. The department stated:

> Having given some thought to the question of the appropriateness of publicising breaches of the requirements of the Code on the Register website, the Department has some concerns that it may not be appropriate to do so as a matter of course. As indicated at the hearing on 21 February, the then Secretary of the Department decided that the appropriate action to take in respect of the breach that had been identified in 2009 was to write to the CEO of the firm to remind it of its obligations under the Code to keep its client details up to date. The Department also reminded all lobbyists of the need to keep their client details up to date.
>
> Publication of the details of any breach of the Code and action taken would effectively add to the penalty imposed for the breach. Particularly in the case of an inadvertent breach, the Department considers that publication of the details on the Lobbyist Register website would not necessarily be warranted. A better approach would perhaps be for publicity to be given to a breach and the action taken in response to it if the circumstances of the individual case warrant it. This could either be achieved by way of a ministerial press release or by notification on the Register website.[51]

Other issues raised

Independent oversight

2.46 A number of submitters suggested that the integrity of the Code and the Register could be improved by giving oversight of its operations to an independent body or authority.[52] The Australian Council on Smoking and Health submitted that:

> Establishment of an independent watchdog to monitor lobbying activities and enforce the Lobbying Code of Conduct is essential to maintaining integrity and preserving public trust in our democratic process.[53]

2.47 The Australian Greens proposed that oversight of lobbying should rest with an independent body similar to the Canadian Commissioner of Lobbying which has existed since 2008.[54] The Greens stated that:

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50 Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch, Department of the Prime Minister and Cabinet, *Committee Hansard,* 21 February 2012, pp 6–7.

51 Department of the Prime Minister and Cabinet, Answer to Question on Notice, dated 23 February 2012, p. 1.

52 See for example Action on Smoking and Health Australia, *Submission 3*, p. 3; NSW Greens Political Donations Research Project, *Submission 5*, p. 9; Australian Council on Smoking and Health, *Submission 11*, pp 2–3; Australian Green, *Submission 17*, p. 4.

53 Australian Council on Smoking and Health, *Submission 11*, pp 2–3.

> Currently regulation of the scheme rests with the Executive. An independent authority, with the capacity and integrity to ensure regulations are applied equally to all concerned, will ensure decisions are not left to the discretion of political representatives.[55]

2.48 The committee is of the view that there is no evidence to support such a substantial expansion of the regulation of contact between government and representatives.

Enshrining the Code in legislation

2.49 There was support from some submitters for the Code to be enshrined in legislation so as to strengthen lobbying regulation and provide appropriate sanctions and appeal rights.[56] For example, the Queensland Integrity Commissioner was concerned that enforcement of the Code relies solely upon the threat of withdrawal from the Register.[57] The Commissioner argued that if the Code were to be backed up in legislation additional penalties could be applied to ensure compliance by lobbyists.[58]

2.50 The Accountability Round Table held similar views on the enforcement of the Code stating that under the current approach:

> A non-legislative approach also limits the sanctions that can be imposed for breaches of the code leaving the blunt instrument of withdrawal of registration as the only feasible sanction.[59]

2.51 The Accountability Round Table therefore recommend that:

> A legislative approach would remove the need for such limitations. It would also have other benefits. It would place responsibility for the design and ultimate control and enforcement of the system with the Parliament rather than the Executive.[60]

2.52 Lobbying firm Kreab Gavin Anderson was against enshrining the Code in legislation reasoning that the lobbying industry is already heavily regulated. The firm stated that it did not support the introduction of sanctions that duplicate existing provisions in law. Furthermore, as there have no serious breaches of the Code to date

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54 Australian Greens, *Submission 17*, p. 4.

55 Australian Greens, *Submission 17*, p. 4.

56 See for example Dr Bob Such MP, *Submission 1*, p. 1; Queensland Integrity Commissioner, *Submission 7*, p. 12; Accountability Round Table, *Submission 8*, p. 7; Australian Greens, *Submission 17*, p. 4.

57 Queensland Integrity Commissioner, *Submission 7*, p. 4.

58 Queensland Integrity Commissioner, *Submission 7*, pp 11–12.

59 Accountability Round Table, *Submission 8*, p. 7.

60 Accountability Round Table, *Submission 8*, p. 7.

and most significantly, illegal interaction is already heavily regulated across Australia's federal and state jurisdictions. As a consequence, 'extra sanctions would not necessarily increase confidence in the operations of the Code and Register'.[61]

2.53 The committee is of the view that the operation of the Code is fulfilling the objectives outlined at its introduction and there is no need for legislation at this stage.

Prohibition of success fees

2.54 Some submitters proposed the banning of so-called 'success fees', as has occurred in some other jurisdictions.[62]

2.55 The experience of success fees in some jurisdictions has been of concern, but no evidence of similar behaviour at the federal level was provided.

2.56 The committee is not of the view that success fees are somehow inextricably linked to corrupt practices. We see no need at the moment to interfere in private contracts to the extent of prohibiting forms and terms of payment.

Conclusions

2.57 The committee's inquiry into the Lobbying Code of Conduct and the Register of Lobbyists has found the regime established in 2008 is working effectively and provides transparency to this very important aspect of government activity. The committee considers that it is meeting its aim of allowing ministers and other government representatives to identify the interests being represented to them by those on the Register.

2.58 The committee notes that the vast majority of submitters supported the Code and Register. Evidence from the Department of the Prime Minister and Cabinet also pointed to high compliance with the requirements of the Register and recent improvements in administrative process which will assist in streamlining administrative processes.

2.59 The committee has considered evidence which called for changes to the Code. In particular, recommendations that the coverage be expanded. The committee does not consider that this is warranted. The committee believes that the code is meeting its defined objectives. While some submitters pointed to codes in overseas jurisdictions as best practice, the committee is mindful of the differences in the Australian parliamentary system and those of Canada and the United States. In addition, such an expansion would result in a significant increase in administrative requirements for both lobbyists and government. The committee does not believe that this would result

61 Kreab Gavin Anderson, *Submission 9*, p. 2.

62 See for example Dr Bob Such MP, *Submission 1*, p. 2; Accountability Round Table, *Submission 8*, p. 15; Australian Greens, *Submission 17*, p. 8.

in any further enhancement of transparency as it is clear whose interests are being represented.

2.60 In relation to the calls for the application of the Code to all members and senators, the committee notes the comments provided by the then Clerk of the Senate, Mr Harry Evans, to the committee's previous inquiry into the Code. The Clerk stated that expansion of the Code to members of parliament would give rise to 'several significant considerations'.[63] These considerations included that the Houses would be regulating the communications between their members and other persons including prohibiting members from dealing with certain persons (unregistered lobbyists). The Clerk noted that:

> The Houses have not previously sought to regulate such communications, and an argument would no doubt be raised that it is not proper for them to do so; surely, it could be argued, private members of the Parliament have a right to communicate with whomever they choose, just as they have the right to determine the sources of their information and the matters they will raise in the parliamentary forum.[64]

2.61 In addition, the committee notes that some supporters of expanding coverage of the Code to all members of parliament point to problems in the States and Territories as justification of this view. The committee does not consider that a parallel can be drawn between the Commonwealth and matters that have arisen in the States and Territories. In particular, at the Commonwealth level there is often less direct ministerial involvement in decisions about contracts, business and planning. The committee is also mindful that the Commonwealth Parliament has well-established institutions such as committees, including Senate estimates committees, which ensure transparency and accountability in decision-making. The committee therefore opposes the expansion of the Code to all members of the Parliament.

2.62 The committee notes that there was mixed support for extending the period of post employment bans on government representatives. The committee does not support such a move as it believes that the current ban timeframes are appropriate to ensure that the integrity of the regime is maintained. In addition, the committee notes that the Register will now identify any former government representative who is registered as a lobbyist.

2.63 Some submitters called for greater harmonisation of the lobbying codes across Commonwealth and state jurisdictions. However, the committee does not support such an approach. The fact that different regimes operate around Australia is not a sign of inconsistency, rather it is a sign of diversity reflecting the needs and priorities of different jurisdictions.

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63 Senate Standing Committee on Finance and Public Administration, *Knock, knock...who's there? The Lobbying Code of Conduct,* September 2008, Mr Harry Evans, *Submission 2,* p. 1.

64 Senate Standing Committee on Finance and Public Administration, *Knock, knock...who's there? The Lobbying Code of Conduct,* September 2008, Mr Harry Evans, *Submission 2,* p. 2.

2.64 The committee does believe that the government should consider a protocol to inform the public of breaches of the Code. If this was to be incorporated in current operations, the Code website could simply include a section to report details of breaches and the sanction applied.

2.65 Other suggestions for changes received in evidence included establishing an independent commissioner, incorporating the Code in legislation and prohibiting success fees. The committee considers these changes are not required as the Code and Register as established are effective.

Senator Scott Ryan
Chair