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SENATE STANDING COMMITTEE ON

FINANCE AND PUBLIC ADMINISTRATION

Monday, 16 June 2008

Members: Senator Polley *(Chair)*, Senator Fifield *(Deputy Chair)*, Senators Carol Brown, Jacinta Collins, Fierravanti-Wells, Moore, Murray and Watson

Participating members: Senators Abetz, Adams, Barnett, Bartlett, Bernardi, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Bushby, George Campbell, Chapman, Colbeck, Coonan, Cormann, Crossin, Eggleston, Ellison, Fielding, Fisher, Forshaw, Heffernan, Hogg, Humphries, Hurley, Hutchins, Johnston, Joyce, Kemp, Kirk, Lightfoot, Lundy, Ian Macdonald, Sandy Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Nash, Nettle, O'Brien, Parry, Patterson, Payne, Ronaldson, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Webber and Wortley

Senators in attendance: Senators Polley, Fifield, Jacinta Collins, Fierravanti-Wells, Moore, Murray and Watson

Terms of reference for the inquiry:

To inquire into and report on:

a. the *Lobbying Code of Conduct* issued by the Government;

b. whether the proposed code is adequate to achieve its aims and, in particular, whether:

   i. a consolidated code applying to members of both Houses of the Parliament and their staff, as well as to ministers and their staff, should be adopted by joint resolution of the two Houses,

   ii. the code should be confined to organisations representing clients, or should be extended to organisations which lobby on their own behalf, and

   iii. the proposed exemptions are justified; and

c. any other relevant matters.

WITNESSES

Committee met at 9.01 am

CHAIR (Senator Polley)—I declare open this hearing of the Senate Standing Committee on Finance and Public Administration as part of its inquiry into the lobbying code of conduct. The code was tabled in the Senate on 13 May 2008 by the Special Minister of State, Senator the Hon. John Faulkner, and referred to this committee the following day.

The committee has thus far received 11 submissions for this inquiry. All have been authorised for publication and are available on the committee's website. These are public proceedings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as contempt. It is also a contempt to give false or misleading evidence to a committee.

If a witness objects to answering a question, the witness shall state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time. A witness called to answer a question for the first time shall state their full name and capacity in which they appear. Witnesses should speak clearly into the microphone to assist *Hansard* to record proceedings. Mobile phones should be switched off. The committee would appreciate opening statements to be kept to two or three minutes.

[9.03 am]

O'CALLAGHAN, Mr John Jerome, Director, John O'Callaghan and Associates

GRAU, Mr Timothy Francis, Managing Director, Springboard Australia Pty Ltd

MOORE, Mr David John, Proprietor, The Next Level Consulting Services

CHAIR—Our first witnesses broadly represent commercial lobbyist organisations. I now invite each of you in turn to make a short opening statement.

Mr Grau—I welcome the opportunity to appear before you in relation to this matter. The submission that I provided to the committee in essence is the same submission I provided to the Department of Prime Minister and Cabinet in its initial consultation process. In that, principally the comment we wanted to make was that we welcome the government's move in this regard. It is long overdue and a good step forward to ensuring transparency and integrity in the public policy and political processes.

However, I believe there are a number of shortcomings to the current code of conduct, and they principally fall into four categories. Firstly, that the code really should have legislative force, secondly, that it should apply to all members of parliament, thirdly, that the definitions are too limited in terms of who and what are lobbyists and they should be expanded and, fourthly, the reporting requirements, I believe, could be expanded as well in terms of the details that lobbying firms should provide.

CHAIR—Thank you very much.

Mr O'Callaghan—I have my own company called John O'Callaghan and Associates Pty Ltd. Thank you for the opportunity to present today. Similar to Tim, I think that the move to introduce a code of conduct for lobbyists is a welcome initiative and one which principally replicates activity elsewhere, including for example in Western Australia and also in Canada, although I note in preparing for today's proceedings that the UK seems to continue to struggle down this path, although they are tempted by the Canadian model which does have some interesting aspects I must say.

In regard to my particular submission, like Tim I also provided some advice to the Department of Prime Minister and Cabinet, and I thought that process to comment on the draft code made considerable sense. In providing the submission to this committee, there are two areas where I believe the code could be strengthened, and they relate to, in particular, the role of the responsible minister and, secondly, the reporting mechanism, particularly for small business entities such as my own.

In regard to the first issue, it relates principally to that clause of the code 10.4. I note that Senator Faulkner in his statement to the Senate indicated that the mechanism for the minister making decisions in regard to who should and who should not be on the register is a mechanism which would be only very occasionally used by the responsible minister. I think that is probably true, although I am a little bit concerned whether, in some circumstances, that would afford too much authority and power to that responsible minister.

I think also that the role of the secretary of the Department of Prime Minister and Cabinet is a fairly wide-ranging role under the code as it currently appears. That is not inappropriate in itself, although I think there should be a mechanism whereby individuals can challenge decisions made by the secretary, particularly in regard to, for example, the mechanism for appeal through the ombudsman. Senator Faulkner in his evidence before the Senate estimates committee on 27 May indicated, for example, that there would be recall for individual lobbyists, who may be either denied access to the register or put off the register, and that they would be able to redress that through either the Federal Court or the High Court. In my circumstance, I cannot imagine a situation where, for example, a small business would go through the High Court process because, firstly, it would be far too costly to do so, so I think that if the code would encapsulate an ombudsman redress process, that would make sense.

Finally, in regard to the second area, the reporting mechanism, I think it is a little bit too onerous on a small business operation. My recommendation to the committee would be to have a mechanism whereby entities reported each six months, as applies under the Canadian system as I understand it, or in circumstances, for example, where the client base has changed that they report automatically. The analogy here to me is that under the BAS reporting mechanism, for example, small businesses and others are required to report quarterly, interestingly in this circumstance, the ATO actually advises them formally in writing to report quarterly. Under the code that is presented here, there is no trigger to actually remind business to do that, so we have a

circumstance, rather unusually I think, that the ATO mechanism is actually better than this one, and I think that would make sense. Thank you very much for the opportunity.

CHAIR—Thank you.

Mr Moore—I think it is worth noting at this stage that I am not currently a lobbying company, however, my duties and what I sell may well include lobbying in the future, but I do have a relationship with a lobbying firm currently. I reiterate a number of the issues which the previous speakers have spoken about, although I think my submission has focused less on issues of process and more on some concerns about the potential outcome of this process, whether it actually achieves what the government or indeed the parliament might be seeking, and whether it includes all the people that the ambit or the scope of such measures should include. In particular, I have a concern that the measures, as they are currently specified, do not necessarily address the balance of risks that we are attempting to address, nor indeed do they address the balance of the shared responsibility between decision makers, third parties and people who may be interested in the outcome of a particular decision. I think it is important to indicate that I am not exactly clear, in reading this process, what the specific acts are that these measures are trying to preclude. I suspect it is a little bit like good art; you cannot always describe it, but you know it when you see it. If some of the more egregious acts, which are bordering on corruption, are what we are trying to target, it is my suggestion that we actually establish a corruption watchdog to deal with that, rather than try to deal with issues by proxy.

It is curious to me that the central issue that we are trying to deal with is the impact that improper influence might have on decision making, yet it is not actually the actions of the decision makers which are subject to scrutiny, but rather those of the lobbyists and the clients of lobbyists. I do not have an issue with that per se, but it does not appear to me to be addressing what the government is hoping to address. Regrettably, the onus seems to fall on the lobbyist rather than on the decision maker to ensure that all facts presented are factual and appropriate. For my part, that seems to be a remarkable let-off for decision makers, who, after all, are elected on trust that they are actually capable of making such decisions. So it is to the extent that there are issues in the sector—and I think it is naive to suggest that there are not. I think it is a shared problem and I am not sure that the current processes which are prescribed necessarily share the responsibility for this process between the decision-makers and the sector.

A key issue I have is with the widespread exemptions to the extent that the overwhelming majority of the lobbying effort is actually left untouched, in my view. There are a number of areas that I am concerned about. One is the exemption of industry bodies and trade unions, who, I think, exert considerable influence in the polity process of Australia these days, both financially and in terms of their intricate contact with the political process. I am also a little bit concerned about the exemption of in-house lobbyists. I would actually note to the committee that, quite often, we are dealing with the same people. So it is not unusual for people to shift between being political staff, being lobbyists, being consultants, being in-house consultants in certain companies, in and out of the trade union movement, in and out of associations. In effect, we are quite often talking about the same class of people. I would actually caution that, if we are to go down this framework, we should actually look to increasing the scope to include in-house lobbyists as well.

For the most part, I think it is important to stress that professional advocacy and ethical advocacy can actually add to the process. Certainly, in my experience as a former ministerial staffer and chief of staff, there were a number of lobbyists who I think succinctly and appropriately helped canvass issues which were beneficial to their clients, most certainly. They almost inevitably declared those interests and they were able to put them into succinct form. So the act of lobbying is an important part of our democracy. I think what we are really trying to address here are egregious acts. I am not sure that the process does that. To that end, The Next Level Consulting Services recommended an alternative or a complementary framework, because I believe it is better to cultivate ethical and professional behaviour in the dealings between the public sector and the lobbying sector by improving standards than to try to regulate a very narrow part of the sector by proxy.

What do I mean by that? I mean that knowing a lobbyist is a lobbyist does not, in itself, promote good behaviour and I think the issues in WA stand testament to that. It is patently clear to those who had contact with some of the players in Western Australia that they knew exactly who they were dealing with and the fact that they might be or might not be registered lobbyists did not necessarily alter their behaviour. So those prone to behave badly will do so, regardless of the attempts to regulate it, in my view. Nonetheless, to be constructive, The Next Level Consulting Services recommended or suggested that we explore an alternative framework through, what I have called, for want of a better expression, an Ethical Advocacy Association of Australia to try to ensure that members of such an association can a) improve standards and b) provide more

surety to the people that they contact in the political process. I will not go through my complete submission at this stage, but suffice to say that, whilst the intent of trying to deal with egregious behaviour is one that we would all agree with, I am not quite sure that the focus on the processes rather than on the outcomes is the best way to go.

Senator FIFIELD—Mr Grau, I just wanted to get your thoughts on a couple of matters. Firstly, I was looking at the PM&C website, which very helpfully has for lobbyists a Q&A section to address some of the issues of concern, one of which is what if an approach is made at an informal occasion—and I guess this could be on one of any number of occasions; it could be a bar in Canberra, or it could be at some sort of corporate function. This section says:

Lobbyists and Government representatives will frequently attend the same functions. Lobbyists wishing to engage in lobbying activities in such situations will need to comply with the requirements of clause 8(1)(e) of the Code—that is, they will need to confirm that they and their client are on the Register and advise the nature of the matter they want to raise on behalf of their client.

How would you see this operating? You are at a bar and you bump into a ministerial staffer: how would you handle that situation? What do you take this to mean that you do? You say hullo and before you say anything else you have to say, 'My name is Tim Grau. I work for Springboard Australia and these are the following matters I would like to possibly raise with you in the course of this casual conversation.' Is that what you think you would have to do in that situation?

Mr Grau—One of the fundamental difficulties I have—and it is around the language and why this code is being implemented—is that there seems to be a desire for government ministers and staff to know who you are and whom you are lobbying on behalf of. In reality, if you are doing the job well and properly, that is part of the process you do anyway. I get the impression that people are lobbying and talking to people without actually explaining to the minister or the minister's staff who they are and whom they are representing. I do not understand how you could lobby on the basis of not being clear about that.

When I make a phone call or try to set up a meeting or have a meeting with someone I always say, 'I am Tim Grau from Springboard Australia and I want to talk to you about X, Y and Z because I am representing X, Y and Z company.' In your particular instance of raising the issue in a bar, it is not the way I go about my business, though if I am having a conversation with a ministerial staffer or a minister at a social event they will know why I am there and they will know whom I represent. It is pretty well known who my clients are and why I am engaging in that kind of conversation.

Senator FIFIELD—So ministerial staff will be safe from you in bars, Mr Grau?

Mr Grau—Pretty much, yes.

Senator FIFIELD—I am sure they will be relieved. Another matter, I jumped on your website after having read your submission and saw a helpful little box down the bottom: 'All the talk about Kevin Rudd', which says:

In this Courier-Mail feature on Labor's Federal Opposition Leader, Kevin Rudd, Springboard Australia's founding Managing Director, Tim Grau, discusses what Rudd was like when they worked together for former Queensland Premier Wayne Goss. Read the article here.

And it is a very interesting article so I immediately jumped to the lobbying code of conduct and read:

8.1 (c) lobbyists shall not make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to Government representatives, members of political parties or to any other person—

and I thought, no, you are definitely in accord with that section. It is a very, very subtle and appropriate pointer to your background so that is good to see. I guess that is a section which lobbyists will have to be mindful of in the material that they produce, but I think you have done nicely there in your website in relation to being in accord with the code. As I think Mr Moore indicated, this register, this code, is focused on the behaviour of lobbyists rather than focusing on ministers and their officers and their decision-making processes. In the context of your submission, have you had any contact with the Prime Minister's office in the framing of your submission?

Mr Grau—No.

Senator FIFIELD—None at all?

Mr Grau—No.

Senator FIFIELD—I want to move to another section of the code which states:

(d) lobbyists shall keep strictly separate from their duties and activities as lobbyists any personal activity or involvement on behalf of a political party.

Mr Grau, I think you are probably aware of a website before the 2004 election called johnhowardlies.com. Do you have an awareness of that website? I understand that at the time, after having been authorised by ABCDE—I am not sure who ABCDE is—that person was then authorised by Springboard Australia Pty Ltd. What are your thoughts as to whether that sort of instance where a lobbying firm was actually authorising what could be seen as a partisan political website would be acceptable under 8.1(d) of the code that lobbyists should strictly separate from their duties and activities of lobbyists any personal activity or involvement on behalf of the political party. Given that the name of the firm is used in the authorisation, would you see that as something which is outside the code?

Mr Grau—It goes to a more fundamental point that I raised in my submission. The current code does not require organisations, be they lobbying firms or otherwise, to be registered if they are engaging in grassroots campaigning. In essence, that website was an example of grassroots campaigning where I was approached by a number of people to assist in setting up that website. I do not think it was originally authorised at all, so the ABCDE that you referred to was in fact—

Senator FIFIELD—So it was originally in breach of electoral law?

Mr Grau—No, it was not actually. I think the government did an inquiry into it at the time and found that it was not in breach of the Electoral Act because the Electoral Act, as it stood then and as is probably still the case now, did not cover electronic communications in that regard. The website was not originally authorised. The company, ABCDE to which you refer was in fact the web hosting company's identification of the owner. They did not identify the owner so they just put in ABCDE. Once the issue was raised at that time I felt, because of the exact issues you are talking about, that the website, although legally it did not need to be, should be authorised. The company authorised it on behalf of those individuals who had approached me to assist them in setting it up.

More fundamentally, the current code that is being implemented would not prevent an organisation, be it a lobbying firm or otherwise, doing the same thing. To take it to the next step, for example, the organisation called GetUp which runs a grassroots campaign—and some would argue they have been quite successful—would not have to register under the current code. I think that organisations who are clearly involved in a lobbying exercise of some sort, be it grassroots or otherwise, and given the power now of the online lobbying that can be done, should be captured by the code.

Senator MURRAY—Thank you for your submission, I thought it was very comprehensive and helpful. One of the points you made in your remarks refers to the lack of an accompanying institution. It seems to me that where you are trying to address material matters of misconduct in public life, it is almost impossible to do so through the normal police or other processes. Really the exposure of such corruption as exists in Australia—in my experience it is relatively low compared with many other countries but nevertheless we are not entirely clean— has only been possible in Queensland, New South Wales and Western Australia because of the crime and corruption commissions that have been established. As you know there is nothing of that sort in the Commonwealth and the previous government strongly resisted such an institution being established. Is it your view that, if you really want to address issues of corruption in public life, you would be better off with a Crime and Misconduct Commission at the Commonwealth level?

Mr Moore—I said as much in my submission that, if you are dealing with issues of corruption, you are far better off dealing with it through the process of a corruption watchdog rather than some other proxy activity. It is important for all of us here to reinforce at every opportunity that the overall process in Australia is a good one. I am not just talking about lobbyists. We have institutions in Australia which are very commendable in their conduct. I have to remark at this juncture that in some nine years as a senior adviser, I cannot remember a circumstance where I sat down with somebody who was acting on somebody's behalf and they would not tell me who they were acting for. To me it would be unforgivable and remarkably politically stupid to engage in that behaviour, but at the end of the day sometimes corrupt behaviour is also politically stupid behaviour.

To answer your question, in short, yes, I do think corruption is far better off being dealt with by proper enforcement agencies, whether they are a corruption watchdog—and I take your point about police. In public life, for issues less than corruption, public defensibility is sometimes a far greater test than the sorts of processes we might set up in the public sector. And I would note that the CMC in Queensland very rarely finds issues of corruption for issues which are, I suppose, quite questionable at best. So they are not necessarily infallible either, in addressing the sorts of issues you are concerned about. Certainly, given where you are

coming from, Senator, I think that by and large the greatest impact that you can have is the exposure of issues if they fall short of corruption. At least canvassing them in the public does a lot to bring them to light and allows the voting public to make their own assessment. In short, my paper says: corruption—deal with it by a corruption watchdog.

Senator MURRAY—I think the point you make is a good one, that it is often less corruption that is the focus than misconduct. It is therefore oriented towards behaviour, rather than crime. Of course the benefit of those sorts of commissions as in Queensland, New South Wales and Western Australia is that they are independent, for one thing. Secondly, they have great powers, essentially powers of royal commissions. Thirdly, when they refer a brief to whichever authority is occasioned by the event, that brief is sometimes subject to very rigorous penalties. Obviously none of those are characteristics of the code of conduct to govern lobbyists and neither should they be. I take your point to be twofold. Firstly, if you are going to have a code of conduct for lobbyists it should be comprehensive; secondly, it is ineffective if it is not accompanied by a mechanism for the full exposure of misconduct, which is not going to be exposed simply through a register process. Is that an accurate summation of your views?

Mr Moore—In the broad I would be happy to accept that characterisation, although it does come back to a point I made in my opening statement. I am not entirely sure that this process is highlighting exactly what behaviour we are trying to improve or target.

Senator MURRAY—Do you think this process should only be designed for that purpose? As you know, one of the characteristics of parliament is to be as open as possible; we avoid secret votes. People have to be seen to do everything in the public eye on the principle that transparency is good in a democracy. Do you not think that one of the main purposes of this lobbying code is, in fact, to reassure people that parliament and its engagement with both lobbyists and activists is an open and transparent process—in other words, not just directed at misconduct but directed at being transparent?

Mr Moore—If I am to be frank, I think it is to establish a symbol that we are going down that path but, to be fair, I am not actually sure it achieves that. To the extent that I agree with the need to deal with a grievous behaviour, I do not have a problem with canvassing these sorts of issues, but I do not think it actually does that. I come back to the central point at issue, which is principally the basis upon which a decision maker has made a decision. This is a process which largely ensures by proxy—which is the mere assumption that by putting a lobbyist and their clients on a screen you are providing that scrutiny—that you are in fact dealing with a decision maker's decision. I do not actually see the decision makers accord the question in this process at all. In fact it is an attempt, to a certain extent, to pull down shutters. One of the downsides of democracy is that we have an expectation that our elected representatives canvass as many issues as widely as they can from as many reasonable parties as they can. I would be concerned about anything which targeted one particular part of the overall lobbying effort.

To come back to your central point: I do not think it is just dealing with corruption. I made a converse point that, if you are trying to deal with corruption, a corruption watchdog is the best way to deal with it. I do not think it is just dealing with misconduct. In the broad I agree with your characterisation of my submission, but there is no substitute for professional and ethical behaviour on behalf of the parties themselves.

Senator MURRAY—You alluded to me being a Western Australian and, of course, it leaves me with a bias towards having both a misconduct commission and a lobbyist register, because what goes on in my state—

Mr Moore—Can I say that the latter has not worked really well.

Senator MURRAY—is, sometimes, just awful.

Senator FIERRAVANTI-WELLS—You are not alone there, Senator Murray.

Senator MURRAY—Senator Fierravanti-Wells makes the point that New South Wales is not exactly a bed of roses either. Mr Grau, I want to ask you about the point you made, that there is a need to give the code of conduct legislative force. That may or may not be right and I need to think more about that. When I think about the code, you could not give this code legislative force, in my view, and I would like to know if that is your view too. A number of its clauses are phrased in a non-legalistic matter and are descriptive and ethical imperatives which would be difficult to have adjudicated at law. For instance, I refer to the clause read out earlier by our colleague Senator Fifield about not exaggerating the nature of your relationship. Imagine testing that in court; it would be fairly difficult. My question to you arising from that is: if you think the code needs legislative force, how would it need to be changed and do you think just some aspects of the code should have

legislative force—in other words, not the entire thing? If these questions are difficult to answer and you are able to come back later with a supplementary submission, please feel free to do so.

Mr Grau—Sure Senator. I preface my comments by the fact that I am not a lawyer or legally trained. My submission is coming from the basis that codes of conduct are just that, they are codes, and they are a guideline for behaviour. We have seen a number of examples where those codes are not in force or the interpretation of what the code is or means can change over time and therefore render them virtually ineffective. That is the starting premise. I then looked at and went to similar systems operating in the United States which have legislative force with financial penalties imposed for breaches of the act. Certainly, I agree with you, I have problems with the current code anyway in terms of it not going far enough, so I would not want to see the current code given legislative force because of the sorts of reasons you have raised, as well as the shortfalls that I make reference to. Part of giving it legislative force is also picking up the point I make about making it apply to all members of parliament. I think it is particularly important that—as occurs now and will certainly occur post 1 July—for any government to get a legislative program through it has to pass through the Senate. The lobbying activity and effort will shift significantly post 30 June because of the nature of the numbers in the Senate.

Senator MURRAY—Mr Grau, can I—just for the record—reinforce your point on the record that in my capacity in carrying the portfolios I do, for my party I have had carriage over the last 12 years of decisions which have affected tens of billions of dollars, holding a balance of power position. For someone like me not to be subject to a lobbyist code is just ridiculous. The point you make that it should apply to all members and senators, not just government ones, I think is well made and I want to reinforce that point by putting my own position on the record. Whilst I do so, Madam Chair, may I also say that in my entire time, not once, not ever, did I ever even smell a hint of corruption or misconduct from anyone approaching me, which I think is to the credit of Australia and the Australian system.

Mr Grau—I agree with you, Senator, and not just in relation to the Senate, but the alternative government. The lobbying effort that goes into there obviously waxes and wanes with the electoral cycle. How the current opposition begins to form its election policies will to some extent be influenced by who is talking to them about what, so therefore they should be covered. Again, going back to your original point that you made with Mr Moore about the transparency process—and it is not just about corruption—I would have thought that having it apply to all members of parliament would improve that transparency and openness to which you referred, and at the end of the day put members of parliament in a better position to the broader community about the processes of how they undertake activities.

Senator WATSON—I agree with Senator Murray. I think if this code is going to proceed there should actually be a legislated code for the Senate because the impact on smaller parties, even parties as small as the Greens, can be very, very significant. I am also worried about the roles of non-profit organisations such as the Festival of Light; universities, which might feel that they are being disadvantaged compared with something else, or feel that they might want an additional faculty; Mission Australia; the churches; all the people who campaign on moral issues, the Dr Nitschkes; the pro-abortionists; those against abortion; and schools.

I am very worried about the lack of a legislative background and the fact that it is just focusing on the legislative branch—essentially focusing on the House of Representatives rather than on the Senate—given the role that some senators can have in terms of the ability to do deals. I think this is perhaps an issue, as Senator Murray has indicated. I have found that a lot of lobbyists provide quite valuable information. I would hope that the numbers of lobbyists are not curtailed as a result of this code, because there is a lot of valuable information that can come forward, not necessarily from big organisations but from people who might be stand-alone lobbyists on some issues.

In its present form, I do not like it. If you are going to have one, I think it has got to have some legislative teeth. Certainly we have got to have one for the Senate if this is going to proceed in its current form—if you want to go down that track. But I am not sure that it is really going to improve the standard of ethics in this country anyway. I am getting a little bit tired of having so many rules that you cannot walk down the street without worrying about whether you are going to infringe something somewhere along the line.

CHAIR—Have you got a question?

Senator WATSON—Do you agree that there should be a separate code for the Senate? I think you have answered the question of whether it should be legislated.

Mr Moore—If you are happy, I would like to address a couple of those points.

Senator WATSON—I would like you to comment on them.

Mr Moore—I think some of the points you have made go to the weakness in the framework, as I see it. The inputs to decision making by members of parliament, senators, members of the executive and officers are so diverse and so great that, to a certain extent, I think you are pointing in the wrong direction. You are trying to legislate behaviour in that direction rather than scrutinising the bases of the decision makers themselves. At the end of the day, that is where it comes to a head.

I have some reservations about the issues surrounding legislation, but that is, I suppose, more due to my experience and understanding of the Westminster system and the need, to a certain extent, for each of the houses to govern their own behaviour. I share some of the cautionary advice or notes that the Clerk of the Senate has made in relation to being careful about introducing justiciable issues into house conduct. I do not think that is as much of a worry when you are dealing with misconduct, which plainly should be covered by law.

One of the reasons why I suggested improving, whether as an alternative or a supplementary issue, the nature of interaction through an ethical advocacy framework is that this problem is shared both by our sector and the houses of parliament—and the executive, for that matter. I think that we do have to monitor and improve, on a constant basis as these interactions mature, the professionalism and the ethics of the people involved, but I certainly think that the current framework is too narrow. It is too narrow in the scope of the nature of lobbying it deals with and, indeed, in the scope of the decision makers it attempts to cover. I am not so sure about legislation or legislative force for activities short of misconduct. It is very hard, in my experience, to legislate good ethical behaviour.

Mr Grau—If I could add to that: in my view, the way I see this operating with legislative force would be very similar to the members' pecuniary interests process or the political donations process. I am not a lawyer, but I imagine that you would end up with a parliamentary committee which would be responsible for the oversight of that register in the same way that the pecuniary interests register operates, as I understand it. So any breaches of that could also then be dealt with through that parliamentary committee process.

Senator WATSON—I have a supplementary question or two. Firstly, you might have the universities association being a lobbyist and they may be registered, but what happens if a couple of small, regional universities want to put their own case? Do they have to register separately? It is going to open up a real can of worms.

Mr Moore—Currently, no.

Senator WATSON—No, but even under this.

Mr Moore—I am talking about this. That would be considered incidental, in my reading of this, and I think it goes to the impreciseness of this code and the activities it actually covers. In my view, if you are going to regulate this sector in this way, you actually have to target the act of lobbying to a certain extent, not try to pick out a couple of players in the process.

Mr Grau—That is right. It also raises the problem with the current register, and you highlight a good point in that Universities Australia as an industry association under the current code would not have to register as a lobbyist, but if the University of New South Wales wanted to lobby, arguably it would have to register under this process. It highlights the problem to me, and I have a couple of good examples with my current client base. If the University of New South Wales had an internal government relations person who was lobbying, they would not have to register; if they engaged a consultant to lobby on their behalf, they would. I have had an example of that where I was lobbying on behalf of Bond University, because they did have a different position to the AVCC as it was then. So under the current code I would have had to register that I was lobbying on behalf of Bond University, but the AVCC did not.

Senator WATSON—It is a can of worms.

Mr Grau—It further highlights that under the current code it tends to be smaller companies, who do not have the resources to employ in-house, who engage people like me to assist them. I have a number of clients who I am doing that for now, where their major competitors, which are major international and national companies, will not have to register. There are particular issues that I may be lobbying very vigorously about on behalf of a client to get government or opposition support for their position, but their major international competitors do not have to register at all because all their government lobbying is being done in-house. The issue you raise highlights the deficiencies in the current code.

Senator WATSON—Thank you.

Mr O'Callaghan—Perhaps I could just add to that, because my understanding in relation to the Canadian arrangement is that there is a legislative framework for it, and that it does include not-for-profit and in-house government relations or lobbying entities or people, so perhaps we could learn some lessons from the arrangement there.

Mr Grau—I understand the American system is the same.

Senator WATSON—It does create problems for ministers, particularly in technical areas, in that they feel that they have got to go out into the community—whether it be the scientific community or otherwise—just to get advice, because the level of advice is not really available in the department. How does the recipient at the other end of the phone stand? Do they say, 'I am not registered?' or 'How does that affect me in terms of the code of conduct?'

Mr Moore—The onus currently would be on the lobbyist to indicate whether they are or are not registered.

Senator WATSON—In that case he is not the lobbyist; it is the minister or the shadow minister going out seeking information.

Mr Moore—I think you are highlighting the deficiencies and I think, at the risk of being a pain, I have to reiterate that good lobbying, good professional advocacy is actually a public good. We should, in fact, be trying to foster it and encourage it, not necessarily target or label certain aspects of the sector as bad—guilt by association. That is not to say that there have not been problems, because there clearly have been, which is why we are here addressing these issues, but I think trying to target particular people and particular processes, rather than dealing with the act of lobbying at the decision-maker point is part of the problem. It is also one of the reasons I would suggest that the committee might be cautious in how it deals with the issue of legislating these behaviours, because lobbying is a part of democracy, and I do not envy your task in trying to describe which parts of lobbying are good and which parts of lobbying are bad.

Senator FIERRAVANTI-WELLS—Just picking up that point that you made, one could also infer that in the circumstance that Mr Grau used, where he acted on behalf of a small player—if I can put it that way—and there was a multinational that had similar interests, perhaps there would be some sort of commercial advantage. It is a public register and you could see who has come in. The multinational may well see the small player lobbying government or lobbying some other person and then immediately come in themselves and do their bit, it I can put it in that sort of language. One could even infer perhaps a framework of potentially unfair commercial advantage.

Mr Moore, picking up your point about the legal framework, how do you define the legal parameter to then look at those sorts of issues of potential unfair advantage?

Mr Grau—I do not see that as necessarily a particularly big issue, and again I am think about my circumstances. The major national competitors are actively lobbying—and I would expect them to—and they would assume that someone is doing it on behalf of the smaller ones. That is not the crux of the issue. The crux of the issue is that if there is a major government decision or parliamentary decision being made—and we are talking about transparency and openness—everyone should know who is talking to whom about what.

Senator FIERRAVANTI-WELLS—I agree with you. I was just saying that that could well be an additional component or an additional issue. I am open to all three of you to comment on this current code of conduct. In relation to the lobbying activity that happens here at parliament and the parliamentary process, roughly what percentage of that activity would this code of conduct, as it stands at the moment, cover? Do you understand the gist?

Mr Moore—The proportion of the lobbying effort?

Senator FIERRAVANTI-WELLS—Yes.

Mr Grau—Given that the code excludes industry associations, trade unions, in-house lobbyists—and I have not been a member of any of those organisations that had a government affairs role, so I cannot profess to know exactly how much they do—I would imagine that the current code would cover very little of the activity that is going on. You are probably in a better position to know that than I am because you have seen those people.

Senator FIERRAVANTI-WELLS—So it is difficult to put a percentage on it—to say 10 or 20 per cent—but it is a small proportion?

Mr Grau—My sense is that it would be a very small proportion.

Senator FIERRAVANTI-WELLS—Would the system, as it is, effectively force a situation where lobbyists just become in-house to avoid—if I can put it that way—scrutiny under the cover?

Mr Grau—Potentially yes, but that is assuming that there is a lack of good faith on behalf of both the company and the person who is a lobbyist. That situation could arise because under the current circumstances it is an advantage to be in-house in terms of having to declare. But as I have said, I have come to this with a view that I have no problem with being open about who are my clients and what I am doing for them, and nor do my clients.

Senator MURRAY—Good.

Senator FIERRAVANTI-WELLS—So, in a nutshell, either all lobbyists, whether they be in associations or unionists—I have a particular issue as far as the amount of lobbying that is potentially done by just those two types of bodies—should be covered, or none. In effect, it is either all or nothing. That is really the point you are making.

Mr Grau—No. Going back to my original point, what is being proposed now is better than what we had before, which was nothing, but it could go much further.

Mr Moore—I make one point in relation to the ability to transition from consulting or outsource to in-house. Many of the people represented by the company with whom I am associated do not have that capacity. I have a slightly different issue with it. I have no problem being disclosed, personally. In fact most of the lobbyists that I dealt with over some nine years as a ministerial staffer had no problem with being disclosed. Some of their clients might not necessarily want to be listed on a public website, especially when some of their competitors are not required to be listed on a public website, but we have to remember that small and medium enterprises and small organisations simply do not have the financial capacity to have significant government-relations in-house advice. I think it goes to a more important issue: it goes to the issue of fairness—

Senator FIERRAVANTI-WELLS—Yes, a level playing field.

Mr Moore—not so much in how they might transition to get around the code, but just in a simple essence: is it a fair measure? I do not think it is.

Mr Grau—It raises another point. When you talk about commercial advantage and so forth—and again I do not have a problem with the declaration of clients—those who will be going to that register of lobbyists the most will be lobbyists, to see what their competitors are doing, who they are working with and whether or not there is an opportunity to gain a new client. They may realise that someone is not covered but this person is covered. But that is the nature of what we do, and I have no problem exposing my client list to the public, whereas most businesses would not seek to do that.

Senator FIERRAVANTI-WELLS—Mr O'Callaghan, did you have something to add?

Mr O'Callaghan—I was taking careful note there. One observation I would make is that, in the case of larger companies, often they employ a number of lobbyists, including in-house, so it is a little bit difficult to make a considered judgement about how much activity they perform here with one entity.

Senator WATSON—How can you say it is a step in the right direction when the exclusion list includes all the people who are most likely to cause particular problems? I cannot see how—

Mr Grau—It is better than what we had before, which was nothing.

Senator MURRAY—I agree with that.

Senator MOORE—How can you say 'most likely to' in that question?

Senator WATSON—That is where the strength lies in terms of exclusion. You concentrate only on the periphery rather than on the central core of the problem. That is my problem.

Mr Moore—I would just make one point. I do not disagree with the basic premise that a step in the right direction is better than no step at all. However, the whole purpose for being here is to make a judgement as to whether it is satisfactory and whether it should, in fact, go further. That ultimately will be a decision for the committee to determine in its recommendations. My view is that, as it stands, whilst it might be better than nothing, it is not satisfactory and we ought not necessarily accept second best. When the institutions that we are protecting have had such a good reputation and record up until now, why not go for the Rolls-Royce solution, in my view?

Senator FIFIELD—Putting the public service aside, I agree with you that it does not matter so much who lobbyists see; what matters is who ministers and their staff see, since the ministers are the decision-makers. In your submission, you made probably the most practical suggestion of any of the submissions we have read, which is that, if ministers disclose their meeting diaries, that would be the most practical way to address all of these issues. I am sure that is very unlikely to happen—

Mr Moore—I agree, for the record!

Senator FIFIELD—but it is a very practical suggestion. Given that that is unlikely to happen, I wonder if you could expand upon your proposal for some sort of accreditation. I think you suggest a voluntary advocacy code of conduct and an Ethical Advocacy Association of Australia.

Mr Moore—My thinking on this is in its infancy. At the end of the day it is really only the product of the last month or so of thinking about this particular issue. In essence, I think there are a couple of issues we need to consider here. One is the reasonable surety that officers in the APS, ministerial staff or ministers have that the people that they are dealing with are ethical, professional and reasonable people to deal with—aside from their own impressions. At the end of the day, the ministers are paid to make judgements in that regard and then be held accountable to them. Nonetheless, it is a growing and maturing sector and there will be some players that they have not necessarily met or heard of before. So any professional association that has reasonable policing of its governance rules and has reasonable training helps the process by providing reasonable surety. But I go further in this. This is a shared responsibility. To a certain extent in the sector, and certainly amongst the three people here, there is the view that there is no problem with trying to clean up what issues there might be in the sector and also improve the basis of decision-making. There is a transaction which occurs at some stage, and I do not mean that in its illicit or improper sense.

Organisations like the Ethical Advocacy Association of Australia could, if it is a genuine partnership—that is, if the resources are shared between either government and the sector or parliament and the sector—in fact be the repository of the exchange of relevant information. To be fair, whilst some people have said they do or do not mind the public disclosure of their clients, it in itself tells you very little. The nature of clients' activities can be so broad that their mere naming without understanding their other interests does not actually tell you what somebody might be lobbying for on their behalf. An ethical association, to a certain extent, might be the place where the register of advocates' interests and the particular nature of their advocacy could be listed, to be interrogated on a transactional basis by the people concerned.

For example, if you have been approached, as a senator, from someone who may or may not have declared, you could deal with the association and say: 'I am considering an issue in relation to communications currently and a potential impact on a tender. I have been approached by your member. To the extent that your rules allow, does that person have an interest or represent an interest that might affect the communications and tendering sector?' You could get a report on that basis, which would be much more useful than the broader issue. More importantly, only the decision maker necessarily needs to know that. Of course it would be disclosable, should you have FOI or other processes, but that is one of the potential benefits of having an ethical advocacy association.

The other one is the fact that, as all maturing sectors should do, they should look at governing their own affairs to a certain extent and approving their own standards. I think the association could help in that way. It is a maturing sector in Australia. It has been around for some time, of course, and, in the Westminster system, lobbying is a longstanding pastime. To the extent that it is becoming much more professionalised, I see a role for that sort of body. I can give you the example of when the Job Network was set up, an outsourced employment services framework was a relatively immature sector. The government took the decision to see the formation of NESA, the National Employment Services Association, because it saw improving the overall standard in the advocacy effort as being a joint mutual responsibility. That is a suggestion, but I would not want to go too much further in terms of the processes because it is a suggestion at this stage. I have a broad framework, but I would hesitate to say that I had thought out all the issues concerned.

CHAIR—In relation to the other submissions, if you care to add anything further to your evidence today, we would be very interested, particularly in relation to comments on the submission from the Clerk of the Senate, Mr Harry Evans. It is appropriate to remind the three of you, as well as everyone else, that the date for registration is 1 July and also to put on record that as at 13 June there have been 44 entities registered, and a total of 74 individual lobbyists, with another 51 applications pending and no rejections of applications at this time. I thank all three of you and, as I said, if you have any further comments you wish to make, we would be very pleased to accept those.

[10.03 am]

JONES, Mr Stephen, National Secretary, Community and Public Sector Union

RAHILL, Ms Alison, Parliamentary Liaison Officer, Community and Public Sector Union

CHAIR—Good morning. I welcome our next witnesses. Would either of you like to make an opening statement?

Mr Jones—The CPSU has made a written submission to the committee, and the crux of our submission is in the nine points made on page 2 of that submission. As senators have a lot of material to get through I will keep my opening comments very, very brief. The code of conduct seeks to require a system of registration and the imposition of standards of ethical behaviours upon those who are engaged as professional lobbyists. That is an objective which we, as the CPSU, fully support. It also imposes limitations on the use of information gained in the course of official dealings both by ministers and parliamentary secretaries and by the staff of members of parliament in their post-employment or post-office engagements. We make the observation in passing that it only seeks to limit the use of information that they may have obtained in their official dealings as an agent on behalf of a third party but not as a principal themselves. So, if we were to look at potential gaps in the code of conduct, that is an obvious gap that we would point out to the senators.

Our principal concern is the post-employment constraint imposed upon members of parliament staff. What the code seeks to do is impose a post-employment or post-office constraint upon not only ministers and parliamentary secretaries but also ministerial staff. It does this on the basis, presumably, that parliamentary staff also have access to information and processes which would give them a privileged position were they to use this information on behalf of third-party clients. A requirement to treat ministerial staff in exactly the same way as ministers and parliamentary secretaries has a very seductive ring to it; however, we submit there are three problems with treating them in the same way.

The first problem is that the conditions of employment or engagement are completely different for ministers and parliamentary staff. The superannuation arrangements and the remuneration arrangements are completely different. They have been crafted for ministers and parliamentary secretaries so as to ensure that ministers do not use their term in office as a way to prepare themselves for post-official employment. The superannuation arrangements, which have often been a point of controversy in this place, have been crafted with exactly that issue in mind. The same arrangements do not apply for ministerial staff. The terms of employment are completely different; indeed, ministerial staff are employed on what would elsewhere be described as a fixed-term employment arrangement.

The second problem that we have with treating the ministerial staff in exactly the same way as the ministers themselves is that the imposition of a post-employment constraint in this instance will be retrospective. It applies to everybody retrospectively, despite the fact that it was not a term or condition of employment when they commenced office—for the most part, sometime between December 2007 and March 2008. This house, and this parliament, has traditionally disavowed retrospective arrangements for reasons which senators are all fully aware of and we say that no different principle should be applied in relation to the ministerial staff who work here.

The third objection that we make is that it is a unilateral alteration of the conditions of employment, without negotiation or consultation with the employees so affected. So for these reasons we support the code, but we suggest that it should not be applied to ministerial staff. We have for some time held that there should be a code—a far-reaching code—of conduct for ministerial staff, but it should be embracing ranges of issues extending well beyond just the relationship that they may subsequently fall into as a lobbyist. It should be dealing with a whole raft of other issues which are, from our organisation's perspective, a matter of public record.

CHAIR—Ms Rahill, would you like to make an opening comment?

Ms Rahill—No.

Senator FIFIELD—In your submission you make reference to the employment arrangements in New South Wales which you say 'give formality to these issues by outlining dispute resolution procedures and discipline'. Are you referring there to a situation where a ministerial staffer can lodge an objection to a post-employment ban? What is the context there?

Mr Jones—I will ask Ms Rahill to respond to that.

Ms Rahill—The New South Wales code of conduct for parliamentary staff applies to all parliamentary staff. There is a grievance procedure in there so the employer-employee relationship is quite clearly defined. There is an oversight mechanism—and obviously there is an area there for discussion—other than if there is a perceived breach of the code termination. That opens up other areas for discussion and right of review. Specifically, there is a clause that we have put into our submission—we have extracted the post employment separation constraint. The grievance and dispute settlement procedures do not specifically apply to just the post-employment constraint. It is to do with any workplace related issue.

Senator FIFIELD—But they do apply to post-employment constraints?

Ms Rahill—I am assuming so.

Mr Jones—Yes, and I guess the key point to make here is that such provisions are available because the code is specific or germane to ministerial staffers and does not seek to embrace the broad range of regulation that this code does.

Senator FIFIELD—Do you know who appeals are made to in the New South Wales system?

Mr Jones—It is my recollection that it is the Clerk of the House, or the equivalent for the upper house in New South Wales.

Senator FIFIELD—So it is something that is imposed or administered by the parliament rather than the government in that system?

Mr Jones—That is correct. I am reminded that, however it was given force to, it was negotiated with the organisation representing the employees. In this case it was the Public Service Association of New South Wales.

Senator FIFIELD—So, in principle, you have a difficulty with post-employment constraints. But, if there are to be post-employment constraints, you think that as part of a broader ministerial code of conduct there should be the capacity put your particular circumstances to a body or to someone such as the Clerk?

Mr Jones—There are two points I would make about that. Quite apart from the operation of post-employment constraints at general law, we acknowledge that ministerial employments probably fit within a different class. The courts have traditionally disavowed post-employment constraints and read them down very narrowly. There may be an argument for a post-employment constraint in the case of ministerial staff, but it is our view that they should be arrived at through negotiation and consultation with the affected staff and certainly not imposed retrospectively without consultation and negotiation, because you are effectively unilaterally altering the contract of employment.

Senator FIFIELD—I note you say—and I have not checked this myself—that Labor's pre-election promise in relation to a lobbyist register did not make any mention of ministerial staff, in terms of constraints upon them.

Mr Jones—That is correct and to the point, Senator. Prior to the election, Labor made a commitment around a whole raft of issues concerning lobbyists and ministers themselves, which we supported. I note in passing that it was not in relation to the ministerial staff.

CHAIR—In relation to senior staff at ministerial offices, my understanding of the code and how it will operate is that, if you were an adviser for private health insurance issues, you could in fact take up a position lobbying on behalf of a hospital. Do you want to comment on that? That is my interpretation of the code and how it will operate.

Mr Jones—There is an ambiguity in the code itself. It appears, on our reading, to say that you could not do that as an agent for a third party. If you were an adviser in relation to health insurance, you could not then come and act as a lobbyist in relation to the health insurance industry. In the case that you have pointed out, could such a person act as a principal for a private hospital or a public hospital? I think there is an ambiguity in the code on that point, because it uses differentially—I will find it specifically for you.

CHAIR—Will that address some of your concerns, then?

Mr Jones—It has not addressed the principal concern about retrospectivity and it does not address the concern that we point out about the difference in employment arrangements between ministers and their staff and the conditions of employment for ministers and their staff. It does not address our concerns about consultation or negotiation.

Senator MURRAY—I normally think about you and your organisation with respect to the Public Service at large and not this specific group that we are talking about of members of parliament staff, shall we describe them, or ministerial staff. Do you have the same representation, the same sort of membership in this group we are discussing as in the Public Service at large? I would not have thought so, but do you have large numbers of your union in MOPS?

Mr Jones—It has increased since late last year.

Senator MURRAY—I would expect that. The reason I ask that is that I wonder, in the expression of your views, as to whether you have been able to consult widely amongst that group, because, if it is only a minority, you would not have been able to.

Mr Jones—It is a fair question. We have published an online survey of all of our members of parliament staff and indeed received responses to that from both members and non-members. Secondly, we have received a number of submissions from members who work in ministerial offices. The survey is still open and it will be concluded and included in our final submissions to the committee. I think your question, however, gets to this point, and that is how representative is the position that we are putting? I would say that it is certainly representative of the concerns of members of parliament staff.

Senator MURRAY—Thank you, Mr Jones, that is where I was going and that is what I wanted to know. I unfortunately need to go to a meeting so, if you would not mind, I can conclude. By the way, I agree with you that there needs to be a broader code of conduct established; I think that is a desirable approach. The question I want to follow up with arises from my ignorance and perhaps you could help me. I am aware that in the Public Service Act 1999 there is a legislative provision that members of the Public Service must abide by the values and ethics and so on of the Public Service—I forget the exact terminology. Is there an equivalent phrase, clause or term in the MOP(S) Act?

Mr Jones—The code of conduct and the APS values, I believe, are the provisions of the Public Service Act 1999 that you are referring to: section 12 and 18 respectively. These apply to public servants, they do not apply to members of parliament staff. It is this gap within this legislation that has caused my organisation for many years now to say that there needs to be an equivalent code particularly in respect of ministerial staff.

Senator MURRAY—The point you are making is that there is a coherent and well thought through framework for the Public Service which is established both through the code and through the legislation and through the Public Service Commission, but that there is not an equivalent for members of parliament staff and ministerial staff and, in many respects, they have a far more sensitive interaction with political life than does the public sector. A broad code therefore needs to be thought through and identified. Is that an accurate summation of your submission?

Mr Jones—Those are our submissions, Senator Murray, and it is our view that these issues are probably best dealt with in the whole rather than as a piecemeal exercise, unless there is some absolute need or urgency. We understand that from time to time government faces the need for urgency. We are not at this point in time able to see the urgency in the application of a piecemeal approach.

Senator MURRAY—Are you having discussions with the minister of this portfolio on this front?

Mr Jones—I have raised our concerns about the process.

Senator MURRAY—That is a different answer. The question is whether you are in discussions about it. Have the government taken up your view as having legitimacy?

Mr Jones—We are not in discussions with any minister of government on this particular matter.

Senator MURRAY—So it is open to this committee, if it agrees with your position, to make that recommendation to the minister. That is what you are suggesting?

Mr Jones—That would be open for the committee, yes, and I think that would be desirable.

Senator MURRAY—Returning to the issue of post-employment restrictions, if I understand you correctly—and please correct me if I am wrong because I think it is a very important point—you are not opposed to the principle of post-employment restrictions for members of parliament staff, providing it is developed in consultation and in the broad framework of a code of conduct. What you object to is it being identified in isolation. Is that a correct understanding?

Mr Jones—That is correct. If I apply for a job which has a post-employment constraint included within it, I do that with my eyes wide open.

Senator MURRAY—This is imposed post facto?

Mr Jones—Yes. I know when I apply for that job that it may limit my options when I move on from that position. That puts me in an entirely different position than if I apply for a job and commence employment—and presumably terminate previous employment—and then in the early stages of employment the field is changed and a post-employment constraint is imposed. In the second circumstance it would be essential that some form of negotiation and consultation occurred which took into account the entirety of the nature of the employment.

Senator MURRAY—As I understand the law, there is no prohibition on unilateral variations of contract from a commercial point of view. I am aware, of course, of unconscionability provisions and that sort of thing. I say that because I know that two committees, the Senate Standing Committee on Economics and the Senate Standing Committee on Rural and Regional Affairs and Transport, both put recommendations forward—which have not, to my knowledge, yet been agreed to by government—to put restrictions on unilateral variations of contract. The position you put is a moral one, I think; not a legal one. The government is entitled to do that.

Mr Jones—I would not concede that there may not be a legal argument that could be advanced in this case.

Senator MURRAY—Nor should you.

Mr Jones—But the force of our argument is about how employment and industrial relations should be conducted in this country; not just in this place but everywhere. We think post-employment constraints should be used very sparingly and where they are used they certainly should not be applied retrospectively, and they should be the product of a consultation and negotiation with the affected employee.

Senator MURRAY—It is quite well-established now internationally in, for instance, the parliaments of Canada, the United States and the UK, to my knowledge, that there should be restrictions on both parliamentarians and senior bureaucrats—not just members of parliament staff but also senior bureaucrats—on transiting immediately from the job they do to a new job where they can use information from the previous job which gives the employing firm a particular advantage. Do you accept that is a legitimate principle to be considered?

Mr Jones—I do. I think there is an easy public case that can be made in respect of post-employment constraints, particularly in terms of ministers, but also potentially in terms of other parliamentary officers. What you will find when you look at the total terms and conditions of employment of those officers that you have referred to, however, is that those constraints often have corollary provisions reflected in the total employment arrangements for those people. Whether those provisions are for more generous superannuation or pension arrangements or whether they are reflected in notice of termination or total remuneration packages, you will find some compensating factor to ensure that if somebody—if I can use a sporting analogy—finds themselves on the bench for 12 to 18 months then they are not without some form of compensation for that.

Senator MURRAY—Yes. They are sometimes described as separation payments rather than as compensation payments.

Mr Jones—Yes. I used the term 'compensation' not as a term of art but, if you look at the total employment arrangements, you will see some compensating factor for the existence of a post-employment constraint, and we would see that as an appropriate mechanism to deal with ministerial staff if the house or the executive deem it essential in the public interest to have such a constraint.

Senator FIERRAVANTI-WELLS—Can I just take you back to the question that Senator Murray asked about the representative view that you have put. Can you put some rough figures to the number of ministerial staff there are in total, and the number of ministerial staff that are members of your union?

Mr Jones—I am advised that there are around about 280 ministerial staff in the building. I might ask Ms Rahill to respond more fully to that particular question.

Ms Rahill—We sent out the survey—which asked people to respond specifically to the lobbying code of conduct—to around 280 members.

Senator FIERRAVANTI-WELLS—Sorry, that is not my question. My question is: do you know the total number of ministerial staff, and can you tell me the number of those who are members of your union?

Ms Rahill—Around 100.

Senator FIERRAVANTI-WELLS—So there are about 280 ministerial staff. Is that what you are saying?

Mr Jones—There are about a hundred ministerial staff who are members of our union.

Senator FIERRAVANTI-WELLS—Right, a hundred out of a total of how many?

Mr Jones—You would probably have easier access to that number, Senator, than I would.

Senator FIERRAVANTI-WELLS—No, you said that your total distribution was to about—

Ms Rahill—Because of the nature of the lobbying code, the no contact with unregistered lobbyists and the definition of government representatives, our scope for seeking feedback on this was not limited to ministerial advisers. We sought feedback from the MOPS staff membership and interested people who were affected, and we received around 30 individual submissions. As well as that, we had three staff meetings up here and we have got another one tomorrow.

Senator FIERRAVANTI-WELLS—I guess if I understood Mr Jones correctly, your concern was really about the retrospectivity issue and about the code that has now been introduced. If I understand correctly, you do not have a problem with future employment—as long, presumably, as there are parameters that address the concerns that you have raised about separation and otherwise—but it is the retrospectivity of this proposal as it affects those members amongst the current ministerial staff that concerns you. That is it in a nutshell, isn't it?

Mr Jones—There are two concerns. The first—and yes, Senator, you are absolutely right—is the concern about its retrospectivity. Secondly, there is the entire context in which a post-employment constraint is located and what other compensating factors might exist if it is deemed to be in the public interest. It is my submission that I think it is probably a pretty easy case to make that there is a public interest in having some form of post-employment constraint. It is not my job to make that case, but I suspect that one could quite easily be made. The consequence of that, however, raises employment and industrial issues which we think need to be addressed in that context.

Senator FIERRAVANTI-WELLS—Mr Jones made reference to the situation in New South Wales. Perhaps it might be useful if we did have a copy of that code in New South Wales if, Mr Jones, you have it or—

Mr Jones—We have and we can provide copies to the committee.

Senator FIERRAVANTI-WELLS—That would be useful, thank you.

Mr Jones—It is a broad-ranging code. It does not just deal with the issue of lobbying.

Senator FIERRAVANTI-WELLS—Basically, you are just saying that it should be separate?

Mr Jones—It is our view that the public's interest would be served by a broad-ranging code of conduct for ministerial staffers, although acknowledging the differences that exist between the Public Service and ministerial and parliamentary staff; one that covers the breadth of the issues.

Senator FIERRAVANTI-WELLS—Thank you, Mr Jones.

Senator WATSON—I am worried about exempt organisations covertly making representations on behalf of third parties. That is possible, isn't it?

Mr Jones—Senator, I missed the first part.

Senator WATSON—Exempt organisations covertly making representations on behalf of third parties.

Mr Jones—That would be possible under the code. At general law, the principles that drafters often apply to these circumstances is that what applies to the principal also should apply to the agent for the principal, but what we have in this code is something which is permissible for the principal but not for the agent. We think there is perhaps a disproportionate arrangement that applies there.

Senator WATSON—I agree with you there.

Senator FIERRAVANTI-WELLS—I know that to date your submission is geared particularly towards ministerial staff, but can I just ask you this general question. Obviously the code does not extend to organisations and unions. Do you have a view about that as a union as to whether you should be included? If you are talking in the broad term, do you have a view about that? I have probably put you on the spot but, then again, in the comments that were made earlier—

Mr Jones—It is, with respect, a fair question. Would it place an onerous burden on my organisation to meet? No, Senator, it would not. Is it necessary? No, Senator, I do not think it is. But were my organisation asked to comply with the principles that are contained within this code as it currently stands at clause 8, well, I would hope that every engagement that my organisation has with the Public Service or ministers is based on those principles.

Senator FIERRAVANTI-WELLS—So I guess as an organisation you have answered that, if it were to include unions and other organisations, professional bodies or whatever, it really would not be onerous; it is really a small extension of what you probably do already.

Mr Jones—The code does its work by two separate mechanisms. The first is that it seeks to impose a set of ethical standards and behaviours upon registered lobbyists, and that finds its way in clause 8 of the code. I have absolutely no concern about that and I think they should be a requirement of any organisation which seeks to approach government or the parliament. I do have a concern about the post-employment constraint, which is the second way that the code does its work—the post-employment constraint on somebody who works as a ministerial employee and then seeks to work for the Business Council of Australia or the Australian Conservation Foundation or perhaps even my own organisation. It is not uncommon that people move between those organisations over the term of the government. I do not think that on balance it would be healthy to constrain that movement.

The current Leader of the Opposition would have to find a new chief of staff, I understand. I frankly do not have a concern; I think it is probably on balance. Where else do parliamentarians find their staff, if not from specialist organisations such as ACCI, or the BCA, or the ACTU, or even organisations such as my own, so I would hate to constrain that movement of employees. However, having said that, I have absolutely no concern about having some forceful mechanism by which ethical standards and the communications are imposed upon people doing lobbying work. I have absolutely no concern about that, and that should be given its full force.

CHAIR—Thank you. I would like to thank you both very much for coming and giving your evidence this morning and in particular for your submission. If you have any further comments arising out of today's hearing, we would be most pleased to receive those. I welcome our next witnesses who are appearing via teleconference from Melbourne representing the Australian Chamber of Commerce and Industry.

[10.36 am]

BARKLAMB, Mr Scott, Director, Workplace Policy, Australian Chamber of Commerce and Industry

MAMMONE, Mr Daniel, Senior Adviser, Legal and Industrial Affairs, Australian Chamber of Commerce and Industry

Evidence was taken via teleconference—

Mr Mammone—The Australian Chamber of Commerce and Industry appreciates the opportunity the committee has given us to appear and make submissions both in writing and orally on the lobbying code of conduct. A special thank you, also, to this committee accommodating us by telephone this morning. ACCI would also like thank the government in providing the opportunity for public submissions and comment on the code before it was finalised and tabled in the Senate on 13 May 2008. The written submission to this inquiry largely reiterates and amplifies a small number of narrow and technical issues on the implementation of the code as outlined in the early exposure draft process. For the record, ACCI supports the general principles of transparency and integrity underpinning the code. ACCI also supports the appropriate and balanced exemptions that have been created which acknowledge the bona fide continuous lobbying role that membership based organisations, such as ACCI and its members, but also others, such as trade unions, their peak councils, NGOs, non-profit associations and charities play in public policy.

We understand that the government's intention when seeking to establish the code was for membership based organisations and their peak councils to not be drawn into the regulatory structure of the code. We strongly support that intention. The core advocacy and lobbying services of these organisations are well established for the general benefit of their constituents. Pages 5 and 6 of our written submission provide the committee with a brief description of ACCI and its members, legal structure and governance.

Whilst ACCI is a non-profit company, ACCI's members are generally non-profit organisations incorporated under the corporations legislation, state and territory incorporated associations legislation, or registered as industrial organisations under federal or state industrial relations legislation. Membership is based on articles of association, a company's constitution or a registered organisation's rules. Each member's purpose and interests are clear, transparent and public. In all cases, ministers and government representatives can at all times have the continuous satisfaction that they know who they are dealing with and on what basis.

To reiterate, our submission engages with the code on a constructive and technical basis and asks for the exemption in clause 3 of the code to be made clearer with specific recommendations on how this could be achieved on pages 9-11 of the written submission. It would in ACCI's opinion make the operation of the code clearer for bona fide bodies and will reduce the need to seek independent advice on whether they are exempt generally or in specific circumstances.

Lastly, ACCI recommends a minor amendment to clauses 7.1 and 7.2 of the code which would, on our reading, restrain ministers and senior public servants from being employed by an exempt organisation for an extensive period of time. ACCI is concerned that the non-profit sector, including trade unions, community organisations, NGOs and charities, for example, may be denied expertise of vital individuals, the best place to make a contribution to the national policy debate. That is our opening statement.

CHAIR—Thank you very much.

Senator FIFIELD—I am not sure which of you gentlemen to direct my question to so I will direct it to both of you. Some of our previous witnesses have indicated that, in their view, the focus of the code is not sufficiently broad, that what should be of concern to the public is not so much who lobbyists talk to, but to whom ministers talk. This code only reveals publicly a very small proportion of the people ministers talk to, such as trade unions and industry associations such as yours. There does seem to be a bit of a mood to expand the coverage of the code. Why is it that in the view of ACCI it is less relevant for ACCI's lobbying efforts to be disclosed than for individual lobbying outfits?

Mr Barklamb—Thank you for that question. I think we would frame our answer, not in terms of the relevance of our being bound by the code or otherwise, but in recognition of our status as registered organisations, as well recognised policy institutions, bodies that have already been regulated by industrial law and exist for a purpose which is industrial representation combining both representation before tribunals and the like and with a lobbying dimension, along with a public recognition of the role of certain core institutionalised NGOs in our public policy debate, and we have had mention this morning of people like the

AMA, ourselves, the Business Council, the Conservation Foundation et cetera. We think we are have a different fundamental purpose and character from a commercial lobbyist that takes a client brief and may then take different client briefs on different matters. It is not a membership based or institutionally based engagement; it is a for-profit engagement, which would differ.

The first part of your question was a suggestion about the broadening of what is subject to the code for ministers, if I understood correctly. We had a debate internally about the extent to which—and all of you sitting here are obviously exposed to this in your political activities—you could not regulate every constituency or interest that might come across you in every social engagement, in airport lounges and the like, who might make—in the course of general conversation—some representations or policy conversation that could be taken as a representation. Unless I am on the wrong track, I think it would be very difficult to be able to discern from a general discourse of any number of interests that know people in the position, such as those held by the people there today and ministers, to discern discrete lobbying events. I think the code tries to work on definitions of lobbying activities that are more visible and discrete. I do not know whether Mr Mammone wants to add to that. We do not have anything to add to that. I hope that has been useful.

Senator FIFIELD—Thank you for that, although the code in its Q&A section on the PM&C website does specifically address casual social contact and does indicate that the code does apply there as well, which is interesting. You did mention that you and unions as registered bodies have primarily an industrial purpose, but in the case of trade unions, they are now heavily involved in superannuation. Your sort of organisation also provides a range of other member services well beyond those of an industrial nature. The fact that you are registered for industrial purposes and that is one of your tasks, does not really abrogate the need for coverage for your other activities under a code.

Mr Barklamb—There were two parts to the reasons we have identified. I think it is not simply the industrial purpose; the second part is the like nature to the non-profit institutionalised policy voices in our community. ACCI and its state chamber and industry association members are industrial bodies, but they are also bodies that are having a continuous engagement with governments on economics, on trade, on tax et cetera of an analogist nature to things like ACOSS, the AMA and the like and they exist for a similar not-for-profit influence and lobbying purpose. It is on that institutionalised regular interaction with government and policy decision makers that we say the code is not necessarily directly applicable in our view to our type of activities.

Senator FIERRAVANTI-WELLS—Following on from what Senator Fifield said, why should it be that when you lobby government or engage in lobbying activities, it should not come under the code but, say, if a member of your organisation, for example, engages a lobbyist to lobby for an issue that crosses over what you may have done also, they should be covered? There is a question here of fairness and that is really what previous submissions have got to. I just do not understand why one aspect can be and one cannot. I do not think, with respect, that you have properly addressed the question that Senator Fifield was asking.

Mr Barklamb—Thank you for that, Senator. I think the distinction we would draw is probably twofold. We are visible organisations with transparent purposes and identification, particularly for something like an industry association. It is very clear what the qualifications for membership are: the retailers may have a clear mark out for the retail industry; the hotels might have a clear mark out for the hotels industry, et cetera. That is one purpose.

The other distinction I would draw, which is probably the more fundamental one, is that we are lobbying on a collective basis, so the individual hotel might choose to take a paid lobbyist for a particular matter, but the collective of the hotels industry may well be run through the Hotels Association, which we think is a different beast. I guess it is a little hard to find an analogy for the sort of NGO or social security side, but you could concede that there are other times that an individual professional or an individual segment of an industry might engage a paid lobbyist, but it would be distinct from the institutionalised policy body that exists visibly in the public policy debate on a more ongoing basis.

Senator FIERRAVANTI-WELLS—I guess you did say earlier you had well established structures—and perhaps I did not quite catch what you said before—but how much would it tax you in terms of effort if you did come under this sort of code? How much effort would that take on your part?

Mr Barklamb—I think there is a couple of ways of answering that. We appreciate the efforts of the government to be very transparent in the Q&A materials that support the code, so we certainly think the government is going to quite an effort to aid compliance and aid passing the hurdle of getting through the code. I think the difficulty for organisations like ours is, firstly, there is a very regular conversation you may

have in some policy areas. I do not think it would surprise any of you to know that we and the ACTU continuously talk with the office of each minister for industrial relations or workplace relations. So there is a continuous engagement to get to work with the code.

There are also ad hoc areas which draw in ministerial areas where we are not dealing with them day to day. So when we start to range into areas of privacy or the Attorney-General's portfolio we have cause to deal with things in the migration area et cetera and there may be some uncertainties created about the status of some of these organisations. There is also a difficulty that some of the smaller organisations—and just to provide the Senate with feedback on how some industry associations operate—they can be very small secretariat based organisations even when they have quite a broad base. We would be concerned that they could be unwittingly non-code compliant and only later come to a lobbying activity and not have secured that hurdle in advance of the lobbying activity they are attempting. They are the principle things we think are difficult. The other point is that the code, as we have seen it so far, contains this notion of an exemption for non-profit charitable or peak industrial bodies. We are debating here a broadening of the code from the way it was initially presented.

Senator FIERRAVANTI-WELLS—There are two very important components of what happens in terms of lobbying in this place. We have heard evidence this morning that effectively results in the exclusions under this code mean that a very small percentage of lobbying activity that occurs here associated with parliamentary activity will actually be covered by the code. There is a very legitimate question as to why have a code when it covers such a small percentage. If I could broadly put it that the industry bodies and the unions are such a large component of sort of lobbying so why shouldn't they be covered just like everybody else? That is really the nub of the issue.

Mr Barklamb—The question the committee may need to ask itself is whether it is the institutionalised lobbyists that I am talking about, the visible national institutions, who give rise to the concerns that have prompted the code.

Senator FIERRAVANTI-WELLS—I guess the other issue is that when one looks at some of the activities and involvement of some organisations across the spectrum they have been very heavily politically involved. I think it does raise legitimate questions about including them in such a code.

Mr Barklamb—The senators and the government will need to consider ultimately what the rationale is for the code. We would repeat our view, however, that we think we are highly democratic, highly regulated organisations already that are quite visible, institutionalised and recognised in our society, along with numerous comparable colleagues and equivalents in the social security, professional union type area, and we are of a different character.

Senator WATSON—What proportion of lobbyists would be covered under the code as a percentage of the total number of lobbyists? I think it would be very small.

Mr Barklamb—Others there would be more aware in the Canberra based context of the percentage of people who commercially lobby as distinct from lobbying by not-for-profit organisations. I suspect that a number of the policy interactions with government are through bodies comparable to our own.

Senator WATSON—The issue that I am raising is in terms of transparency. It may be one step in the right direction but I would suggest it is a very small step. To use your earlier example, if the Hotels Association lobby in their own right they would have to be on the register. But if you lobby on their behalf, there is not that level of transparency, is there?

Mr Barklamb—That was not quite the analogy I was making.

Senator WATSON—I know, but I just used those examples rather than draw other organisations into the argument. You had already used those two bodies.

Mr Barklamb—May I just clarify the basis on which I did so. Our reading of the code is that the Hotels Association—I did not want to get too specific about any industries—as such is a not-for-profit body and should be exempted by the code. Where the lack of clarity arises, we say, is that there is an express exemption of peak bodies and it could be clearer that the non-for-profit industrial bodies generally are of a like and comparable character and should be similarly exempt. The point I was making earlier is that an individual set of hospitality employers might choose to engage a private lobbyist. That is of a different character than working within a general collective view of their industry association.

Senator WATSON—I perceive a problem of not having ministers, not having a full coverage of all members of parliament, particularly given the numbers in the Senate. Deals can be done, lobbyists in those

areas can exercise a very significant role and probably even open to corruption maybe—I don't know. I certainly am not aware of it, but the possibility I think is ever present. But the coverage does seem to be focused on the outsiders rather than to the main players, and just to say we know where they are likely to come from, I am not sure if that is an adequate reason for their exemption. Would you like to comment?

Mr Barklamb—I guess we come back to this democratic, collective, institutionalised, highly public nature of the way our organisations work. To come back to the earlier conversation we had, there are any number of ways that decision makers are influenced: everything from the most public of things like letters to the editor, or op-ed pieces in a newspaper through to casual conversations or things that arise completely ad hoc or unplanned. The question I guess for the committee in dealing with this inquiry is one of targeting of those lobbying activities which you believe need be regulated and need have the lobbyist prescribed and identified and a mix of administrative convenience and striving to not deny policy interests voice or, indeed, deny decision makers the input of the range of voices they should be able to hear.

CHAIR—Thank you both for your submission and making yourselves available this morning.

Mr Barklamb—Senator, may I just amplify one more part of our submission? It is merely to underscore the importance we say of organisations like ours and our not-for-profit colleagues having access to a fulsome pool of talent, expertise and experience, post employment as a ministerial staffer or minister. I think something similar was said by the preceding submitting party. We just invite the committee's attention to that part of our submission also.

CHAIR—Thank you very much.

Senator WATSON—You may well be a not-for-profit organisation, but that does not say you do not represent a lot of power and vested interest.

Mr Barklamb—That is a very difficult question to answer. Each of the major bodies of comparable institutional status and personality in our society, be it ourselves, the AMA, the Conservation Foundation, ACOSS, they all represent significant and powerful interests within our society. But I think as a personal view and organisational view, we strive as an organisation to make a healthy contribution to each area of policy we address.

Senator WATSON—They all have the common thread of self-interest.

Mr Barklamb—I think all organisations strive to present to each government policy positions which meld their interests with the interests of the society more generally and an engaged and pragmatic recognition of the policy imperatives of the day. That is certainly the type of values and policy contributions we are attempting to make at ACCI.

Senator WATSON—Thank you.

CHAIR—Again, thank you both.

[10.59 am]

EVANS, Mr Harry, Clerk of the Senate

CHAIR—Welcome. Mr Evans, would you like to make an opening statement?

Mr Evans—I am basically happy to run with the submission, Madam Chair, which of course deals with the question of the extension of the code of conduct to members of parliament and their staff.

CHAIR—I was wondering if I could just ask you to elaborate on your concerns that you put in the submission?

Mr Evans—The purpose was just to flag some of the issues that would arise in relation to extending the code to members, their staff and the two houses generally. Having raised those issues, I thought that it might be discouraging, so I added a sentence at the end saying that this was not meant to discourage the committee from considering this matter, but there are significant issues. One of them is managing a sort of joint registrar of lobbyists which would be jointly managed by each of the two houses and the executive government, and having a joint registrar of lobbyists managed by each of those three bodies.

The next issue is the question of enforcement. You would have to have a different system of enforcement for the houses and their members and staff than you have for the executive government, which is able to apply a regime of enforcement by its own internal executive processes. You would be extending the rules of the two houses into the area of the extra-parliamentary conduct of members, to an extent governing their extra-parliamentary conduct and governing who they can deal with. That would raise the question of by what means you enforce this against both the lobbyists and the members. The only means that readily present themselves are the contempt jurisdictions of the houses, which are notoriously fairly blunt instruments. But that is certainly preferable to any sort of statutory scheme, which would raise even more serious issues of intrusion by the judiciary into the internal arrangements of the houses and their members. They are the issues that I see arising in relation to any such extension of the lobbying regulation regime.

Senator FIFIELD—Clerk, if we could just assume for a moment that there was a code in place that covered senators as well. Do you think that such a code, if it was in place, should extend to cover bodies who lobby on their own behalf?

Mr Evans—As I said in the submission, that would simply add to the issues that you have to consider. In effect, you are regulating the communication between members of parliament and external bodies. An argument could be mounted that the houses should simply not attempt to do that, that the communication of members with external bodies should remain completely free, otherwise the political system, the representation system, will get gummed up unduly if you seek to closely regulate what amounts to political communication. Extending it to those kinds of bodies would add to the dimensions of the problem.

Senator FIFIELD—At a theoretical level, I would be of the view that such a code should be extended to cover those who lobby on their own behalf, but I take your point. I think I probably have more sympathy for the view that the ability of senators to communicate and take advice should not in any way be restricted. An additional concern there, certainly under the code as it is proposed by the government, the Special Minister of State in his capacity as Cabinet Secretary would have the capacity to remove someone from the register of lobbyists or to deny them registration in the first place. It would be an odd situation if you had a person—I assume that there would not be in the case of the Senate the minister who was doing that; it might be yourself or someone else—actually stipulating who a senator could not meet with.

Mr Evans—You would have to have some sort of system of joint registration to avoid having three different registers of lobbyists. I suspect you would have to have some sort of appeal mechanism to deal with decisions to put people off the register. Further down the track, there is the problem of enforcement of how to prevent unregistered lobbyists from dealing with senators and how to prevent senators from dealing with unregistered lobbyists. There you have only the houses' power to regulate the conduct of their members, if it does extend to regulating that sort of conduct, and you have to rely on a certain amount of moral suasion, I suspect.

Senator FIFIELD—Would it be your view that the capacity of senators to communicate with whomever they want, whenever they want, should override the concept of a lobbying code applying to all and sundry?

Mr Evans—I think there is an argument to that effect, and I think it is a fairly strong argument. All I say is that it should not rule out some attempt to deal with the problem of covert influence on senators, but it is a big

consideration. You may come to the conclusion that it is simply too hard to attempt to regulate that sort of political communication. I would not be surprised if you did.

Senator WATSON—I think the Clerk has highlighted a lot of the weaknesses as the bill now stands. I really think we probably should go back for extensive redrafting if we wish to proceed.

Senator FIFIELD—Some of our earlier witnesses mentioned the Canadian model, the Canadian code for lobbyists, which applies, from what the witness said, to members of the Canadian parliament. Are you aware of any models internationally which do apply to parliamentarians? If you do, can you give us an indication of how those operate?

Mr Evans—I am not intimately familiar with the Canadian model but, as I understand it, it relies more on members getting advice about potential problems and being steered away from problems before they occur, which I think is probably a very good model for any future regime that we would have here to avoid problems before they occur. The one we keep reading about is the one that applies in the houses of the US Congress, where there are very strict codes of conduct dealing with all manner of things, including dealing with lobbyists. The houses themselves have their internal enforcement processes through their equivalents of privileges committees. There are a constant string of cases of people being accused of being in breach of the code and inquiries being conducted and committees issuing various degrees of admonition to members and the houses issuing admonition to members. It is very, very complicated and time consuming. Looking at that system is one of the things that might make you think that it is too difficult to deal with the problem of lobbying. Gifts and improper influences and so on is another matter, but on the question of lobbying it might well persuade you to think that it is all too difficult to attempt to regulate political communications in that way.

Senator FIFIELD—But you do see some merit in there being an independent person from whom senators could seek advice on integrity issues.

Mr Evans—Yes, an adviser to the members and their houses, and a willingness on the part of members, the houses and political parties to accept a situation where members can do something which they subsequently, on taking advice, come to think is not appropriate to do without a huge political penalty being inflicted upon them. In other words, members are free to go and take the advice, reverse their decisions and change something they are doing without being held to a great political penalty.

CHAIR—As there are no further questions, thank you, Clerk.

Mr Evans—Thank you, Senator.

[11.09 am]

SHANNON, Mr Craig Anthony John, Secretary, United Services Union, Australian Capital Territory

CHAIR—Our final witness for today, Mr Craig Shannon, is the secretary of the ACT clerical and administrative employees branch of the United Services Union. Welcome. Would you like to make an opening comment? We have asked people to keep it to two or three minutes.

Mr Shannon—Sure. I will not keep you too long. Thank you for allowing me to attend today on behalf of the United Services Union. We have lodged a written submission with the committee, and I am just here to, hopefully, address any questions that may have arisen from that and to give some further illustration to our concerns. I have the unique experience of having personally been an employee in both an electorate office and a ministerial office, so I have some perspective about some of the concerns that employees might carry directly in this regard. I would also like to say, in general terms, that we support the submission tendered by the Community and Public Sector Union with regard to the concerns that they have raised with regard to employees and the recommendations that they have proposed. That is, I think, pretty much all that I need to bore you with at this point! Thank you.

Senator FIFIELD—So you are very much in agreement with the CPSU that ministerial staff and MOP(S) Act staff are, in effect, going to be retrospectively bound by this code of conduct in terms of their post-employment engagement?

Mr Shannon—Absolutely. I am also in agreement with their concerns as to the restriction of their future employability. I will illustrate one of my personal concerns. As a lot of staff tend to turn over—particularly at the completion of an election campaign cycle with a change of government, for instance—that would probably be, I suspect, when most people might have this code apply to them, particularly when they unfortunately may not have foreseen change of employment circumstances. At that time, it does create a situation where a lot of people may have severe limitations on their capacity to seek further employment in areas that they have actually got the capacity to be employed within. I am also concerned about some slight confusion in the wording of the document as to its application to Public Service employees generally, particularly those who may be providing some kind of services as a departmental representative and who, at some point subsequent to that period of time, depart the employment of the Commonwealth and are deskilled, in effect, in their capacity to seek further occupational work in areas that they have the ability to work within.

In general terms, I think there may be a concern for the parliament that it could produce a deskilling of staffing because it would be a significant disincentive for employees to put themselves forward for opportunities to work in ministerial offices if they feel that it may have a recurrent impact on their capacity to seek further employment after the event. This is so particularly with regard to advisers, who I think frequently come in for fixed-term appointments or fixed-term tenures that are not necessarily full three-year periods. There would be a significant disadvantage, I would have thought, in the minds of those individuals if they were seeking to put themselves forward for employment. It might be preferable, in their mind, to stay out of the job market up on the hill if that were the case.

Senator FIFIELD—There is one possible scenario which comes to mind. I am just thinking of the previous government. Staff of the then Cabinet Policy Unit were MOP(S) Act staff. I am not sure if it is the same arrangement under this government, but you can imagine that for someone who worked in the Cabinet Policy Unit there would be almost no area of government activity that they did not have a direct and close knowledge of which might not be available to others in the workforce. I can foresee that someone in that situation could basically be ruled out of working for almost anyone.

Mr Shannon—In that sense, being a local representative based in Canberra, I have to say that I think that Canberra as an environment is uniquely disadvantaged by the impact of this proposal. The marketplace in the ACT often overlaps, as you would appreciate, between the parliamentary and government sector and the private sector. As Canberra is an environment where people live and work within what is often referred to as largely a company town, there is a lot of transference of skills and experience back and forth through that marketplace on a regular basis at the employee level.

Whilst we support the nature of the objectives of the proposal in regards to transparency of government activity and public confidence in the nature of those activities, there are a number of mechanisms already in place that regulate the performance of employees, should they, for instance, go and disclose official secrets. I recall when I was a Commonwealth public servant, at one point I was very early on apprised of my obligations

not to disclose after my employment matters to which I had become aware of during the course of that employment. I would have believed that those mechanisms would be sufficient to ensure the integrity of the process that is already in place.

There is not remuneration in the environment, I would have thought, that would justify the imposition of the standards that have been proposed by this proposal, and to the extent that I think the deskilling issue has not really been considered, to some extent I think the parliament could be the bigger loser from a proposal like this as it stands proceeding. I think there is a public expectation on the performance of elected members in regards to their behaviours and activities, particularly after they hold office. But, given that employees are generally regarded not as the decision makers in these environments, I am a bit confused as to the purpose of the application.

Senator FIFIELD—You mention in your submission that the code does not include details of an appeal process or a program of review. Could you outline what you have in mind there?

Mr Shannon—It concerns us that there is no transparency to the enforcement mechanisms or the potential liabilities that will be involved in a breach, whether it was a knowing or an unknowing breach in regards to this. I believe that other witnesses have already referred to some of the issues in regards to the application of this for enforcement purposes, but a code that is barely enforceable at least in a transparent sense would seem to leave many opportunities for it to be breached in application terms. If there was to be an application of these sort of mechanisms to employees, there needs to be transparency as to what mechanisms they might have accountable to proceed if they needed to challenge any of the applications to the punitive nature of what the code is intending, although even to that extent I am not sure what the actual liability would be on an employee should they be seen to breach this code of conduct.

CHAIR—Thank you very much for your evidence and your submission. Obviously, you have covered everything to the committee's satisfaction, so thank you very much. That concludes the hearing for today, but we will be convening at a later time to hear from Prime Minister and Cabinet on the issue, and the report will be tabled on 28 August 2008. Thank you, everyone.

Committee adjourned at 11.17 am