Possible Reforms to the Lobbying Code of Conduct and Register of Lobbyists

DISCUSSION PAPER

July 2010

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Introduction

In 2008 the Australian Government introduced a Lobbying Code of Conduct (the Code) and established a Register of Lobbyists (Register) to ensure that contact between lobbyists and Commonwealth Government representatives is conducted in accordance with public expectations of transparency, integrity and honesty.

Any lobbyist who acts on behalf of third-party clients for the purposes of lobbying Government representatives must be registered on the Register and must comply with the requirements of the Code.

While the introduction of the Code and the establishment of the Register have contributed to good governance in the industry and provided greater transparency, the lobbying sector continues to be the subject of public commentary.

As part of the Government's commitment to keep the Code under review, several proposals aimed at strengthening and maintaining the integrity of the Register and the Code, as well as addressing the broader issues of openness, transparency and accountability, were discussed at a roundtable meeting of selected lobbyists in March 2010.

Participants at the roundtable were also given the opportunity to provide general feedback on how the current arrangements were working and to raise other matters not covered by the draft reform proposals.

Areas of possible reform, some background information and additional feedback provided by roundtable participants are set out in this discussion paper for comment. The proposals in this paper are intended as a starting point for a dialogue on the way forward for future reforms.

The Government will consider the need to amend the requirements of the Code and Register in the light of the feedback it receives on this discussion paper.

A copy of the Code is available to view and download from the Lobbyists Register website at http://lobbyists.pmc.gov.au/conduct_code.cfm .

Comments should be submitted to the Lobbyists Register via email to lobbyistsregister@pmc.gov.au by Thursday **30 September 2010.**

JOE LUDWIG
Cabinet Secretary
July 2010

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1. **The creation of an industry association with:**
    a. **membership of the association contingent on ongoing professional education**
    b. **membership of the association being a pre-requisite to registration, or indicated on the Register of Lobbyists.**

There is currently no federal industry association for lobbyists.

Industry associations can serve to promote understanding and awareness of their industry, encourage professional standards and act as a representative body for their members. There are lobbying industry associations in other jurisdictions such as the UK and EU that provide a range of services to their members including promoting their industry and encouraging professional development.

In the UK, the Association of Professional Political Consultants (APPC) represents the issues and concerns of their members, enhances the image of the lobbying profession and serves as a referral source for those seeking representation. There are also industry associations in other related industries. For example, the Public Relations Institute of Australia (PRIA) provides services for public relations professionals. Their functions include providing information on accredited professional courses.

Representatives of the recently formed Queensland Government Relations Professional Association (GRPA), advised the roundtable participants that GRPA had been formed to counter negative public perceptions of lobbyists in Queensland and to present a united front in response to proposed reforms to the Queensland Lobbying Code of Conduct. Membership of the association is voluntary and open to in-house and third-party lobbyists. The association has its own code of conduct which has similarities to the code adopted by the Public Relations Institute of Australia and the journalists' code of ethics.

The GRPA considers that it has assisted the Queensland lobbying profession to make effective representations to the Government and Integrity Commissioner regarding the operation of the Queensland Lobbying Code of Conduct.

The Code could be amended to make membership of an industry association a pre-requisite for registration. Alternatively, membership could be voluntary, with members able to indicate on the Register that they belong to an industry association for the information of government representatives and the public.

There are a range of existing organisations which have members within the lobbying industry (including PRIA). An alternative to a separate industry association could be to recognise membership of other appropriate associations.

The Government does not at this stage intend to require lobbyists to be members of an industry association but notes that a national association could bring positive outcomes for the

industry, including an ability to engage more effectively with Government to represent members' interests and to work towards preventing a 'piecemeal' regulatory approach in individual states.

An industry association for lobbyists could provide or arrange for the provision of professional development. Professional development requirements could include a requirement to undertake initial training covering topics including the Lobbying Code of Conduct, ethical conduct generally, Australian Public Service values and Code of Conduct, the Code of Conduct for Ministerial Staff, the Standards of Ministerial Ethics, Australian Electoral Commission donations and disclosure rules and public sector procurement and probity. This could be followed, for example, by ongoing training on an annual basis.

An alternative to a professional association could be an 'industry consultative group' that could meet two or three times a year to work with the Government on relevant issues.

Issues for consideration

- How would the establishment of an industry association, including membership arrangements, the provision of training and associated matters be managed? Would it deliver increased professional standards for the industry?

- Would an 'industry consultative group' be a feasible alternative to an industry association?

2. A requirement that lobbyists disclose on the Register of Lobbyists the details of any lobbyists who were Ministers, former ministerial staff or senior APS and ADF personnel.

Under the Lobbying Code of Conduct, former ministers, parliamentary secretaries and senior APS and ADF personnel are prohibited from engaging in lobbying activities in certain fields for prescribed periods. There is no current requirement for ongoing disclosure of previous roles in these areas.

Many lobbying firms already provide details about the background of their lobbyists as a way of attracting prospective clients.

Identifying lobbyists who were former ministers, ministerial staff or senior APS and ADF personnel (SES level and above) and the date they left office would provide further transparency for prospective clients and government representatives about the background and credentials of lobbyists.

This proposal would go some way to addressing criticism of lobbyists perceived to be making improper use of contacts within government by ensuring that government representatives are aware of the background of lobbyists who contact them.

Issue for consideration

- Would a requirement for additional disclosures of this nature increase public confidence in the operations of the lobbying sector?

3. **Increasing the period of the ban on former Ministers and Parliamentary Secretaries undertaking lobbying activities from eighteen months to <u>two years</u>, and on matters that they had official dealings in their last <u>two years</u> in office.**

and

4. **Extending the ban on former Cabinet Ministers to all matters, not just those matters where they had official dealings.**

The Lobbying Code of Conduct provides that:

> 7.1 Persons who, after 6 December 2007, retire from office as a Minister or a Parliamentary Secretary, shall not, for a period of 18 months after they cease to hold office, engage in lobbying activities relating to any matter that they had official dealings with in their last 18 months in office.
>
> 7.2 Persons who were, after 1 July 2008, employed in the Offices of Ministers or Parliamentary Secretaries under the *Members of Parliament (Staff) Act 1984* at Adviser level and above, members of the Australian Defence Force at Colonel level or above (or equivalent), and Agency Heads or persons employed under the *Public Service Act 1999* in the Senior Executive Service (or equivalent), shall not, for a period of 12 months after they cease their employment, engage in lobbying activities relating to any matter that they had official dealings with in their last 12 months of employment.

The Standards of Ministerial Ethics require Ministers to undertake that, for an eighteen month period after ceasing to be a Minister, they will not lobby, advocate or have business meetings with members of the government, parliament, public service or defence force on any matters on which they have had official dealings as Minister in their last eighteen months in office.

The extension of the prohibition period would provide further assurance to the public and Government representatives about the appropriateness of dealing with former ministers working as registered lobbyists.

The current policy is aimed at preventing former ministers, parliamentary secretaries, ministerial staff, APS employees and ADF personnel from using knowledge about matters that they had official dealings with while in office if engaged as third-party lobbyists.

Criticism of former ministers has not been confined to their lobbying activities in areas related to their portfolio responsibilities; lobbying on unrelated areas has also attracted censure. The criticism has centred on lobbyists allegedly making improper use of their contacts in government, rather than their knowledge of particular issues.

This proposal would prohibit former Cabinet ministers from using their contacts within Government, as well as their knowledge of government policies and plans, in any subsequent career as a third-party lobbyist for a certain period of time.

Participants at the roundtable meeting did not express a view on this proposal other than indicating that this was a matter for Government to consider.

Issue for consideration

- Would increasing the length and coverage of the ban contribute to increased confidence in the lobbying industry by members of the public?

Other matters raised by participants at the roundtable

Extension of Code/Register to all third-party lobbyists/in-house lobbyists

The Code currently provides an exemption for members of professions such as lawyers, doctors and accountants who make occasional representations to Government on behalf of others in a way that is incidental to the provision to them of their professional or other services.

The Code currently does not apply to in-house government relations staff as it is clear whose interests are being represented.

Issues for consideration

- Given that is clear whose interests they represent, would an extension of the Code to in-house lobbyists provide any additional transparency?

- Could the ethical standards underpinning the Code apply more widely in the sector?

Differing requirements in the State Codes/Registers

In addition to the Commonwealth Code and Register, each State has its own Code and Register. While participants at the roundtable were generally happy with the administration of the Commonwealth Code and Register, some raised concerns over the need to comply with several different regimes. It is a matter for individual states to decide on the rules applying in their jurisdiction.

Issue for consideration

- Are there concerns about managing the requirements of different jurisdictions?

Sanctions for breaches of the Code

The Code establishes a process for investigating and dealing with alleged breaches, with the Secretary of the Department of the Prime Minister and Cabinet having the power to remove a lobbyist from the Register if necessary.

Participants at the roundtable raised the issue of clearly defined, graduated sanctions for breaches of the Code. For example, while deregistration may be appropriate for serious misconduct, there may be other occasions, such as for inadvertent or unintended breaches, where a warning or another measure would be the proportionate response.

Issue for consideration

- Would more clearly defined sanctions increase confidence in the operations of the Code and Register?