

HAWKER BRITTON GROUP PTY LTD

Submission to the Senate Inquiry into the
Operation of the *Lobbying Code of Conduct*
and the Lobbyist Register

27 January 2011

Hawker Britton

Hawker Britton is Australia’s leading government relations and government lobbying firm. We offer an unrivalled level of expertise in Federal, State and Territory government lobbying, as well as advising companies on issues, policies and commercial matters related to Australian Federal, State and Territory governments.

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Executive Summary

This submission is in response to the invitation to contribute to the 'Inquiry into the operation of the *Lobbying Code of Conduct* and the Lobbyist Register' by the Standing Committee on Finance and Public Administration References Committee sent by the Committee Secretariat on 30 November 2011.

The submission makes the following recommendations:

Recommendation One:

The Lobbyists Code of Conduct should be reviewed to ensure that the ethical obligations owed by lobbyists to government in their direct dealings are also reflected in their dealings with clients.

Recommendation Two:

That all organisations that seek to lobby government on behalf of their members be required to register on the Register of Lobbyists, include details of all those professional lobbyists who work on their behalf and disclose the names of any financial contributors to them who exceed the current disclosure threshold under the *Commonwealth Electoral Act 1918*.

Recommendation Three:

The Lobbyists Code of Conduct should apply to all professional lobbyists.

Recommendation Four:

The restrictions in the Lobbyists Code of Conduct prohibiting certain post-employment conduct should be included in the contracts of employment of Ministerial staff. Mechanisms should also be examined to ensure similar appropriate restrictions can be placed on Ministers and Parliamentary Secretaries and made enforceable.

Recommendation Five:

Clause 8.1 of the Lobbyists Code of Conduct should be amended to make it clear that, similar to the Australian Public Service Values and Code of Conduct, lobbyists can engage in personal political activity.

Recommendation Six:

The House and Senate should each establish a Register of Lobbyists and Codes of Conduct substantively identical to that established by the Government. All three Codes should be administered through a joint or mutual recognition process.

A Code of Conduct should also be established for Members of Parliament and administered through the respective House and Senate Privileges Committees.

Recommendation Seven:

To ensure transparency, when a listing is made public following the grant of an exemption under clause 5.2 of the Code, the fact that an exemption was granted should be made public.

The Role of Lobbyists

Lobbyists play a legitimate role in a modern democracy, not only in securing outcomes for their own clients, but also in bringing a diverse set of views to Government.

Lobbying is a two way process, providing organisations with the opportunity to make their case to government, while also providing government with the necessary inputs to make decisions.

While lobbyists operate in the interests of their paying (and pro bono) clients they also facilitate a vital part of the policy process. The policy and decision making process is not, and cannot be, carried out in a vacuum. It needs to be properly informed by outside and diverse interests. This view was acknowledged in a UK House of Commons Public Administration Select Committee on Lobbying in late 2008, when it defined the practice of lobbying in order to influence political decisions as:

*'A legitimate part of the democratic process. Individuals and organisations reasonably want to influence decisions that may affect them, those around them, and their environment. Government in turn needs access to the knowledge and view that lobbying can bring.'*¹

Modern day governance in developed democracies has become increasingly complex and sophisticated, diminishing the ability of individuals and organisations to understand, let alone influence government decision making processes.

In Hawker Britton's experience many individuals and businesses struggle to understand the complex institutional, legal and political processes which drive government decision making. Individuals and organisations principally employ lobbyists to help demystify these processes for them and to be better educated on how best to make their case to government.

The rapid expansion of the lobbying industry in Australia, also mirrored in other modern social democratic countries, is due in part to the public (individuals, organisations and businesses) demand for greater knowledge about how government operates.

Third Party Lobbyists

Hawker Britton is a 'third party' lobbyist.

John Warhurst, Professor of Political Science at the Australian National University describes third party lobbyists as "...technicians, like lawyers and accountants, who perform a fee for a legitimate service."²

In effect, third party lobbyists provide specialised management consultancy services to third parties to assist them to better understand and undertake their dealings with government.

Notably, third party lobbyists, while significant within the government relations industry, are distinguishable from the in-house lobbyists who represent the interests of one organisation.

¹ (2008). Public Administration Select Committee. H. o. Commons. London, The Statutory Office of the United Kingdom Volume 1.p5

² Warhurst, J. (2008). "Regulating Lobbyists: The Rudd Government's New Scheme" Public Administration Today (July-September).

In-House Lobbyists and Regulatory Affairs

Many of Australia's largest corporations, community organisations, churches, unions, and industry associations employ in-house government relations and regulatory affairs lobbyists.

Many of these lobbyists would perform essentially the same roles and functions as third party lobbyists; however they do so for a single or related group of entities and are in an employment relationship rather than acting as an agent.

Some of these organisations in turn engage third party-lobbyists both on an ongoing or project basis because of their specialised skills and knowledge.

Examples include often very specialised and technical advice, or where the interactions with government are on a scale or frequency that requires additional resources not needed on a long-term basis by the organisation.

Governments are increasingly regulating economic, environmental and social activity through complex and technical approval processes. As a consequence subject matter regulatory specialists have emerged to ensure individuals and organisations comply with the law or can gain necessary approvals for their actions.

Many of these specialists deal with government regulators through decision-making mechanisms established by the Executive and the Parliament but not managed directly by them.

The vast majority of persons and organisations registered as lobbyists on the Commonwealth Lobbyist Register fit into this category. They would rarely, if ever, deal with a Minister or their offices or with Members of Parliament. Many would also rarely participate in policy development processes and few would regard a knowledge or participation in political activity as relevant to the services they provide.

Political Lobbying

Political lobbying is becoming more sophisticated. Political action groups and think tanks are forming beyond traditional political parties and single issue interest groups with the express purpose of seeking to influence public debate, and thus political and policy outcomes.

These organisations actively engage in lobbying government through a range of community and media campaigning and government processes, including making submissions directly to the Executive and to the Parliament.

At present, and with the exception of the requirement to comply with the *Commonwealth Electoral Act 1918* for the purposes of authorising political advertisements and declaring donations relating to electoral matters, these organisations are not regulated.

Public Perceptions of Lobbying

Hawker Britton believes it is vitally important the Government and the wider community better understands the day-to-day functions a lobbyist performs and the role they play in modern day

executive and legislative processes. Misunderstanding the legitimate role of lobbyists in modern governance fuels public cynicism not only of lobbyists, but also of the Executive and the Members of Parliament with whom they engage.

Stories of improper behaviour tend to overshadow any understanding of the important role the great majority of lobbyists perform in undertaking government relations and regulatory affairs work.

This has been a long running theme in Australian politics, as Herr and Woollard stated (in 1980) in the Australian Journal of Political Science:

*“Although lobbying has become an established feature in contemporary liberal democracy, the term continues to carry a pejorative connotation in the minds of many Australians. It conveys images of special interests, private deals, and pork barrel politics; images which cut across widely-held populist notions of government”.*³

This is why many lobbying firms avoid usage of the term ‘lobbying’ when describing their business, often resorting to terminology such as ‘government relations’, ‘public affairs’ or ‘regulatory affairs’.

Pro-Bono Lobbying

One way a more equal playing field for less influential or wealthy organisations and causes can be secured is for lobbying firms to routinely engage in pro bono lobbying.

Hawker Britton’s practice has always aimed to engage a proportion of its clients pro bono. Currently, more than 10 per cent of the company’s clients are listed on the Commonwealth Government’s Lobbyist Register on this basis.

This has been in response to the reality we acknowledge, that there are many worthy causes, charities and organisations who cannot afford the resources or services of professional lobbyists.

The Ethics of Lobbying

Over the past few years, the professional lobbying industry has come under greater scrutiny Australia-wide. Hawker Britton welcomes this development. Professional lobbyists should operate in a transparent environment governed by an appropriate set of regulations. Such an environment can help build public confidence in lobbying and make clear to lobbyists and government representatives their legal and ethical responsibilities.

We see as necessary to the improvement of standards of governance the introduction of rules aimed at helping to improve public confidence in lobbying activities and increase recognition of the legitimate role of lobbying activities.

Hawker Britton acknowledges the importance a code of conduct has in guiding the expected standards of conduct between lobbyists and government representatives. Not only is a code of conduct important in maintaining public expectations of transparency and integrity in government, but it is also a vital part of maintaining trust and expectations between a lobbyist and client.

³ Herr, R. A. and C. Woollard (1980). "Lobbying, Legitimacy and Brokerage Politics in the Tasmanian Parliament." Australian Journal of Political Science 15(2): 124-135.

As lobbyists, we recognise it is not in our interest or the industry in general, to be seen as operating under an ethical cloud. For this reason, Hawker Britton has maintained for many years, and takes extremely seriously, a strict Code of Ethics. Our code states:

Hawker Britton believes it is a democratic right of individuals, groups or organisations to try to influence and inform public policy and to employ professional representatives to monitor developments and advocate their positions. Hawker Britton believes in promoting a better public understanding and appreciation of the nature, legitimacy and necessity of lobbying in our democratic process.

Hawker Britton believes it is the duty of our political consultants to monitor the activities of the institutions of government and to enable our clients to present a proposal or a case in the most effective way to the relevant institution. Our public affairs consultants will not engage in any conduct that is detrimental to the reputation of Hawker Britton, its clients, or the practice of public affairs.

As such Hawker Britton consultants will:

- *not engage in any conduct that may be, or may be perceived to be, corrupt or dishonest;*
- *disclose to all clients any actual or potential conflict of interest;*
- *not make misleading, exaggerated or extravagant claims about the nature or extent of their ability to realise outcomes;*
- *advise clients where their objectives may be illegal or unethical, and refuse to act for a client in pursuit of any such objective;*
- *vigorously and diligently advance and advocate the clients' interests;*
- *respect the confidence of our clients and not reveal confidential or privileged information obtained during the professional relationship;*
- *use reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided to clients, the wider public, governments and agencies;*
- *make no appeal to government, clients or the wider community that is based on racism, sexism, religious intolerance or any form of unlawful discrimination.*

Hawker Britton's Code of Ethics is available on our website:

<http://www.hawkerbritton.com/CodeofEthics/18/Overview.html>

Regulation of Lobbyists

Regulation of lobbyists is principally aimed at achieving two objectives.

First, to require lobbyists to declare their clients in order that governments know who they are being lobbied by. This is usually achieved through the establishment of a Register of Lobbyists.

Second, to ensure both the lobbyist and the person being lobbied behave ethically. This is usually achieved through a Code of Conduct applying to the lobbyist and corresponding Codes of Conduct or Statements of Values that apply to Ministers, their staff and public servants.

Commonwealth Regulation of Lobbyists

Hawker Britton advocated for and supported the establishment of the Commonwealth Register of Lobbyists and the Lobbying Code of Conduct and has supported the establishment of similar Registers and Codes in other jurisdictions.

The Commonwealth Government's Register of Lobbyists and the Lobbying Code of Conduct for lobbyists were established in 2008.

The Government also released *Standards of Ministerial Ethics*, most recently updated in September 2010⁴ and a *Code of Conduct for Ministerial Staff*.⁵

Both are consistent with election commitments made by the Australian Labor Party in Opposition prior to the 2007 Federal election.

The conduct of public servants more generally is regulated by the *Public Service Act 1999*, other Acts, the APS Values, the Code of Conduct and other guidelines.⁶

In understanding the operation of the Lobbyists Code of Conduct it is essential that it be read in the context of and operate in conjunction with the obligations also placed on those being lobbied.

Recommendations for the Code of Conduct

Hawker Britton's code extends several additional ethical obligations towards the relationship with the engaged clients.

This recognises that the ethical obligations of a lobbyist arise not merely in their conduct with government, but also in how they advise their clients to behave. For example, it should not be appropriate for a lobbyist to advise a client to directly engage in conduct which the lobbyist should not engage in themselves under the Code of Conduct.

While many firms self-regulate on this matter, the industry as a whole ought to have clearer principles built around ensuring the maintenance of professional ethics towards clients and to encourage ethical behaviour by the clients themselves. This would ensure greater professionalism within the industry and over time, foster greater public trust in lobbying activities.

In the absence of an industry body to regulate and monitor the quality of government relations advice, obligations towards engaged clients form an important part of fostering and ensuring ethical conduct between lobbyists and clients. This would potentially provide another ethical benchmark which would help maintain the high standards of professionalism more likely to be associated with ethical behaviour.

Recommendation One:

The Lobbyists Code of Conduct should be reviewed to ensure that the ethical obligations owed by

⁴ http://www.dpmc.gov.au/guidelines/docs/ministerial_ethics.pdf

⁵ http://www.smos.gov.au/media/code_of_conduct.html

⁶ APS Values and Code of Conduct in practice Australian Public Service Commission (2009) Australian Government.

lobbyists to government in their direct dealings are also reflected in their dealings with clients.

Broadening the Definition of Lobbyist

3.5 “Lobbyist” means any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client, but does not include:

- (a) charitable, religious and other organisations or funds that are endorsed as deductible gift recipients;
- (b) non-profit associations or organisations constituted to represent the interests of their members that are not endorsed as deductible gift recipients;
- (c) individuals making representations on behalf of relatives or friends about their personal affairs;
- (d) members of trade delegations visiting Australia;
- (e) persons who are registered under an Australian Government scheme regulating the activities of members of that profession, such as registered tax agents, Customs brokers, company auditors and liquidators, provided that their dealings with Government representatives are part of the normal day to day work of people in that profession; and
- (f) members of professions, such as doctors, lawyers or accountants, and other service providers, 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.

However, if a significant or regular part of the services offered by a person employed or engaged by a firm of lawyers, doctors, accountants or other service providers involves lobbying activities on behalf of clients of that firm, the firm and the person offering those services must register and identify the clients for whom they carry out lobbying activities.

Hawker Britton recommends that the definition of ‘lobbyists’ in clause 3.5 of the *Lobbying Code of Conduct* (‘the Code’) be extended.

Disclosure of All Lobbyists and Major Donors

Currently, only third party lobbyists are required to disclose all their clients on the Register of Lobbyists.

Electoral campaigning organisations including political parties and many major political action groups are required to disclose significant political donations to the Australian Electoral Commission.

However, these disclosures fail to capture the significant proportion of political activity and influence on government decision-making that occurs through industry and community associations, trade unions and other influence groups, including think tanks.

In reality, these associations are interest based third party lobbyists.

Most associations that seek to aggregate views declare who their members are and therefore the interests they represent. For most, it is an essential part of their marketing and informs government

about their ability to bring together a range of interests for the benefit of policy development. Bodies across these sectors like the Australian Industry Group, the Australian Council of Trade Unions and the Australian Council of Social Services readily do this.

However, other bodies are formed in such a way that hides from government, the media and the public, who or what they really are and who they truly represent.

A recent example occurred in the debate about the plain packaging of tobacco.

Whether you support their position or not, it is clearly appropriate in a pluralist democracy for companies to argue their case themselves or through an identifiable industry association. It is also appropriate for small retailers to express their views.

However, it is another matter to pass off an interest group as representing small retailers if major companies are really funding it and to then not disclose that funding.

This concern emerged in relation to the Alliance for Australian Retailers, which now discloses on its website that it is “supported by British American Tobacco Australia Limited, Philip Morris Limited and Imperial Tobacco Australia Limited.”⁷

Interest is also growing about the role of political action groups and think tanks and who is funding them. These concerns have been expressed about bodies across the political spectrum, from GetUp! and the Australia Institute to the Centre for Independent Studies and the Institute for Public Affairs. GetUp! makes Electoral Act disclosures.

Most claim to represent an intellectual or philosophical perspective and thus assert their opinions cannot be influenced. However, in Hawker Britton’s view the philosophical or intellectual consistency of these organisations is not the point. The focus, size, research capabilities and influence of these organisations in the public debate are all inevitably linked to how much money they have and who is funding them.

It is Hawker Britton’s view that organisations seeking to influence the public debate, such as major industry associations, community groups and think tanks, should be required to disclose major sources of funding. This should occur regardless of whether they spend their money on electoral advertisements or a lobbying campaign.

Where such an organisation seeks to influence political and public policy outcomes, government, the media and the wider Australian public are entitled to know who its financially significant members and supporters are.

Hawker Britton acknowledges that this may be an administratively burdensome issue for many grass roots organisations. For example, political parties are only required to disclose political donations above specified thresholds. Accordingly, similar rules should apply to these political action groups and think tanks.

A simple solution for this would be to acknowledge that these organisations are lobbyists, to require them to list themselves on the Register, to disclose any professional lobbyists employed on their

⁷ <https://www.australianretailers.com.au/whowerepresent.php>

behalf, and to disclose on the Register all financial contributors to them who exceed the current disclosure threshold under the *Commonwealth Electoral Act 1918*.

This measure would also help ensure that any professional lobbyists employed by these organisations comply with the Code of Conduct.

Recommendation Two:

That all organisations that seek to lobby government on behalf of their members be required to register on the Register of Lobbyists, include details of all those professional lobbyists who work on their behalf, and disclose the names of any financial contributors to them who exceed the current disclosure threshold under the *Commonwealth Electoral Act 1918*.

Application of the Code to all Lobbyists

The problems with limiting the purview of the Code to third-party lobbyists only have been extensively discussed in various submissions from the lobbying industry and from Hawker Britton.⁸

The stated aim of the Code is that it *'is intended to promote trust in the integrity of government processes and ensure that contact between lobbyists and Government representatives is conducted in accordance with public expectations of transparency, integrity and honesty.'*⁹

However, the Code only regulates certain business models, not the activity of lobbying. As a consequence, a significant proportion of lobbying activity goes unregulated.

First, and most importantly, this is contrary to the public interest as it leaves potentially unethical and improper attempts to influence government entirely unregulated.

Second, in its current form, the Code is not competitively neutral, and has the potential to provide an incentive for individuals who wish to escape regulation to simply;

- a) Work part-time for an organisation as an in-house lobbyist, including being "in house" for multiple firms;
- b) Work for an organisation which by definition in the legislation provides professional or technical services, such as a law firm or accountancy practice;
- c) Work for member-based organisations lobbying on behalf of members; or
- d) Work for industry organisations lobbying on behalf of industry participants.

These individuals would not be required to be on the Register of Lobbyist, nor would they be subject to the Code.

⁸ The Senate Standing Committee on Finance and Public Administration "Knock, knock... who's there? The Lobbying Code of Conduct", September 2008, p6.

⁹ Department of the Prime Minister and Cabinet, *Lobbying Code of Conduct*, May 2008, Preamble, p. 1.

Recommendation Three:

The Lobbyists Code of Conduct should apply to all professional lobbyists.

Post-employment Prohibitions

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.

Any prohibition on lobbying activities for certain individuals by nature of their previous employment should operate in the same way as restraint of trade clauses for businesses.

The key difference being that in the case of those individuals mentioned in clauses 7.1 and 7.2 of the Code it is the public interest that should be protected by the prohibition, rather than the commercial interest of a business.

Any restriction on subsequent employment for a former government representative should also be made by the Commonwealth (the employer) through a clause in the contract of employment and should only be sufficiently restrictive so as to achieve the purpose of the Code. That is, to *'promote trust and the integrity of government processes and ensure that contact between lobbyists and Government representatives is conducted in accordance with public expectations of transparency, integrity and honesty.'*¹⁰

As it currently stands, Clause 7 of the Code falls short of this stated aim.

At present, there is nothing precluding a Minister or ministerial advisor from working as a consultant, producing briefs for clients using sensitive information gained in the course of their employment in public office. As long as the person in question does not communicate with a Government representative (see rule 3.4), there is nothing in the Code that precludes them from using the advantage attained by virtue of the nature of their previous employment in other ways.

¹⁰ Department of the Prime Minister and Cabinet, *Lobbying Code of Conduct*, May 2008, Preamble, p. 1.

Standardised post-employment provisions in employment contracts for all relevant government employees would address the gaps in protection of the public interest that are present in the Code in its current form.

The same requirements of proportionality and reasonableness should apply in the interpretation of post-employment prohibition clauses for all of the employees mentioned in clause 7.2, as apply to the interpretation of restraint of trade clauses.

Whilst Hawker Britton argues that employment contracts are the best medium for regulation of post-employment, this does not preclude retaining a section of the Code that is consistent with the standard prohibitions.

Mechanisms should also be examined to ensure similar appropriate restrictions can be placed on Ministers and Parliamentary Secretaries and made enforceable.

Recommendation Four:

The restrictions in the Lobbyists Code of Conduct prohibiting certain post-employment conduct should be included in the contracts of employment of Ministerial staff. Mechanisms should also be examined to ensure similar appropriate restrictions can be placed on Ministers and Parliamentary Secretaries and made enforceable.

Political Involvement

8.1 Lobbyists shall observe the following principles when engaging with Government representatives:

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

The right of all Australians to engage in civil society, including membership of and participation in political parties is a fundamental human right.

Any regulation of that right must be only that strictly necessary and reasonable to protect the public interest.

Utilising party political decision-making structures to influence debate can be a legitimate mechanism to achieve public policy outcomes. All major political parties have internal policy decision-making processes that are relevant to outcomes in government or the Parliament.

However, lobbyists need to be clear at all times whether they are acting in a professional or personal capacity.

The Australian Public Service Values and Code of Conduct state:¹¹

- *It is quite acceptable for APS employees to participate in political activities as part of normal community affairs.*
- *APS employees may become members of or hold office in any political party.*

The current clause 8.1 of the Code is not clear as to its effect. On a strict reading it could be interpreted as being more stringent than the Australian Public Service Values and Code of Conduct.

We recommend that clause 8.1 be amended to make it clear that, similar to the Australian Public Service Values and Code of Conduct, lobbyists can engage in personal political activity.

Further, from time to time lobbyists have been employed by political parties to provide strategic advice and services in election campaigns. Providing these services are not connected to their lobbying work then this activity should also not be affected.

For its part, the staff of Hawker Britton have overwhelmingly engaged in activity on election campaigns in their personal capacities. It is also Hawker Britton's practice for any staff who work on election campaigns to take leave from their positions and to remove themselves from the Register for the duration of the campaign.

The staff of Hawker Britton who have worked on recent campaigns have also entered into personal commitments to the Australian Labor Party to disclose any actual or perceived conflict of interest that may arise between their personal campaigning activities and any lobbying activities they have engaged in.

Recommendation Five:

Clause 8.1 of the Lobbyists Code of Conduct should be amended to make it clear that, similar to the Australian Public Service Values and Code of Conduct, lobbyists can engage in personal political activity.

Coverage of the Parliament

The Code currently covers contact with Ministers and Parliamentary Secretaries, Ministerial staff and public servants. It does not regulate communication with Members of Parliament.

Members of Parliament, particularly Shadow Ministers and cross-benchers, can have carriage over important decisions with significant policy and financial implications. As such, in order to maintain the regulatory integrity of the Code, lobbying of all Members of Parliament should be regulated.

Any expansion of the Code to apply to Members of Parliament would need to be implemented as three separate but substantively similar regimes – one for each house and one for the Executive. This would avoid any legal issues that may arise out of a joint resolution of the House of

¹¹ APS Values and Code of Conduct in practice Australian Public Service Commission(2009) Australian Government

Representatives and the Senate relating to the independence of each house mandated in section 50 of the Constitution. It would also avoid legal issues arising from regulation of the internal processes of the executive by the Houses of Parliament.¹²

These regimes could be administered using a joint or mutual registration process to avoid unnecessary administrative burden for lobbyists as well as the Parliament and Executive.

The key benefit to extending regulation in this way is that the regulatory integrity of the Code would be strengthened by pursuing the purpose of the Code in a consistent, thorough manner, so that interactions with individuals who play an active role in influencing policymaking are subject to regulation across the board.

The Committee took issue during the 2008 inquiry with regulation that might limit honest forms of communication by Members of Parliament in the course of fulfilling their duties.

First, it is important to note that nothing in this recommendation would impact on the reasonable capacity of individuals or organisations to lobby a Member of Parliament.

The current Code does not require disclosure of who is being lobbied or on what issue.

However, it would require a lobbyist to comply with the same ethical obligations in lobbying a Member of Parliament as they are the Executive.

Just as importantly, these Codes should be accompanied by a Code of Conduct for Parliamentarians, administered by the relevant House or Senate Privileges Committee to ensure members of Parliament likewise behave appropriately.

Second, the Code only applies to professional lobbyists. Non-professional individuals or businesses are not bound.

Third, it ensures consistency of sanction for breach of the Code. If a lobbyist has breached the current Code and has their registration removed it would seem extraordinary that the same person could still freely lobby a Member of Parliament in their professional capacity.

Hawker Britton submits that the benefits of extending coverage to include regulation of lobbying activities with all Parliamentarians far outweigh any concerns that may arise in relation to regulation of the wrong types of communication. These concerns are misplaced considering the limited nature of the definition of "lobbying activities" in clause 3.4 of the Code.

Recommendation Six:

The House and Senate should each establish a Register of Lobbyists and Codes of Conduct substantively identical to that established by the Government. All three Codes should be administered through a joint or mutual recognition process.

¹² The Senate Standing Committee on Finance and Public Administration "Knock, knock... who's there? The Lobbying Code of Conduct", September 2008, p14. See also Mr Harry Evans, Clerk of the Senate, Submission 2, p 1.

A Code of Conduct should also be established for Members of Parliament and administered through the respective House and Senate privileges Committees.

Operation of the Register

The Commonwealth Register of Lobbyists has been in operation since 2008 principally as an online service.

Since its inception, additional functionality has been added to the website including improved search capability and improved back office functionality. Hawker Britton advocated for and strongly supports these improvements.

The staff of the Department of Prime Minister & Cabinet who have implemented the service have been helpful and diligent at all times and deserve to be highly commended.

An important feature of the Commonwealth Code is clause 5.2 which permits lobbyists to seek an exemption from the public listing of a client in specified circumstances. Hawker Britton has sought and obtained temporary exemptions from listing for clients involved in highly market sensitive transactions in accordance with that clause.

The Department has considered those request in a timely and thorough manner and also facilitated a speedy listing once the market sensitivity has passed.

This has enabled effective discussion with Government and regulators in advance of market sensitive announcements, especially in those circumstances where consultation is also desired by government, while preserving the integrity of the Register as a means of ensuring that government knows whom is making representations on another's behalf.

Recommendation Seven:

To ensure transparency, when a listing is made public following the grant of an exemption under clause 5.2 of the Code, the fact that an exemption was granted should be made public.