

Democracy in Australia – Post ministerial employment and lobbyists

Restrictions on post separation employment

Ministers are charged with administering departments on behalf of the Government and often gain confidential and valuable information while doing so. The experience and expertise they acquire may then be sought by companies and groups seeking to benefit. Oversight of post separation employment is required to ensure that former ministers and senior staff cannot receive inappropriate benefit, including employment, relating to the operation of the portfolio they administered.

Restrictions would act to prevent former ministers profiting from their former office and remove the possibility that the option of such employment might influence the decisions of ministers while still in office. In addition, a limitation on immediate employment in their previous portfolio areas would avoid any perceptions of inappropriate behaviour. A number of prior ministers have taken immediate employment within their portfolio areas on leaving office. For example, in 2001, Michael Wooldridge resigned as Federal Health Minister. As Minister, he had awarded the Royal Australian College of General Practitioners a \$5 million grant. He joined the college as a consultant shortly after. No suggestion is made that Wooldridge or others acted improperly but their actions are open to adverse perceptions and it is inevitable that media attention is drawn to connections such as these.

Restrictions in other democracies

In Britain, the US and Canada, members of parliament are bound by codes which restrict their post-parliamentary work in the private sector.

In Canada, public office holders are banned from taking improper advantage of their previous role. In the US, former holders of elected positions are barred from lobbying for 12 months after they leave office, with penalties including imprisonment for breaches. In the UK, for the

period of two years after holding elected offices, former Ministers must gain approval from an independent committee before taking up private sector employment.

Code of Conduct

In September 2010, Prime Minister Gillard introduced an updated 'Standards of Ministerial Ethics' document, which states that ministers after having left office must 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. Ministers are also required to undertake that, on leaving office, they will not take personal advantage of information to which they have had access as a Minister, where that information is not generally available to the public.”

The supervision of post-ministerial employment by a parliamentary integrity office would be an important step toward a strong independently enforced code. Ethics regulations should be enshrined in legislation, since a legislated and independently enforced code removes any perceptions that treatment of third parties by ministers or their staff could be influenced by the anticipation of later favourable treatment for them. Restrictions on employment should extend to two years. This would be consistent with international practice.

Control of lobbyists

Julian Fitzgerald writes that in 2007 one billion dollars was spent by groups lobbying the Federal government and that lobbying funds were growing at three times the rate of inflation. In 2008, the Rudd Government introduced its register of lobbyists and an accompanying code of conduct for lobbyists. The register is publicly accessible and holds information of the ownership, staffing and clients of lobbyists registered to approach the Federal Government. The Code of Conduct sets out the scope of the register, basic

ethical principles of lobbying, and prohibits certain individuals from joining the register. Former Ministers and Parliamentary Secretaries are barred for 18 months after their relevant employment, and senior staff of these persons for 12 months.

Problems with the register

In early 2010, The Age newspaper reported that while the Federal Government was performing a very broad review of taxation, large legal and accounting firms were lobbying the Federal government. Senior staff and consultants of these firms included former Labor State Premiers Wayne Goss, Bob Carr and Steve Bracks. No suggestion is made that these former premiers have been engaged in improper lobbying but their roles related to firms which have been engaged in lobbying illustrates the potential for inappropriate action by former politicians. The key point is that because the staff of these firms are directly employed, their lobbying activities are unregulated. At the same time, the firms have donated hundreds of thousands of dollars to political parties. The Age describes lobbying activity as having gone “deeper into the shadows”, as a lobbyists’ register which covers only lobbying companies cannot bring this activity to light.

The register, furthermore, contains no reports from the lobbyists who are registered; once a lobbyist is registered, his or her activities are invisible to the public.

John Warhurst points out that some of the biggest players in lobbying are employed directly by companies, and they must be held to the same level of scrutiny as lobbying organisations. The register should also report meetings which have taken place with Ministers and ministerial staff.

More effective control of lobbyists

If the restrictions on lobbyists are to be effective, the code of conduct and register of lobbyists must be integrated with the code of conduct for Ministers. Currently, the Ministerial Code of Conduct sets out a duty to deal only with properly registered lobbyists but a much more transparent system is needed to:

- cover lobbyists who are directly employed by large service providers as well as lobbying firms

- include mechanisms for public recording and exposure of lobbying activity
- be regulated by a Parliamentary Integrity Officer.

Review

A review of the current lobbying code of conduct was completed in July 2011 and included recommendations regarding:

- the need for lobbyists to disclose details of any former government representatives on their declarations relating to the code
- the possibility of electronic submissions of statutory declarations.

The Senate Finance and Administration Committee further examined the Lobbying Code of Conduct and the Lobbyist register and reported in March 2012, generally concluding that the Code was operating effectively and meeting its defined objectives. No recommendations for change were made.

Further reforms are needed to include details of all people engaged by lobbyists to assist their activities. The provisions relating to post separation employment of ministers and others remain to be strengthened.

Sources

Lobbyist control plans in disarray, The Age, February 6, 2010

<http://www.theage.com.au/national/lobbyist-control-plans-in-disarray-20100205-nipq.html>

The Persuaders, The Age, February 6, 2010

<http://www.theage.com.au/business/the-persuaders-20100205-nitf.html>

Department of the Prime Minister and Cabinet, Lobbyist Code of Conduct and Lobbyists Register

<http://lobbyists.pmc.gov.au/index.cfm>

Fitzgerald, J., 2007, The Need for Transparency in Lobbying, Discussion Paper 16/07, Democratic Audit of Australia

http://democratic.audit.anu.edu.au/papers/2007092ofitz_lobbying.pdf

T H E A U S T R A L I A N C O L L A B O R A T I O N

Holland, I., 2002, Post-separation employment of ministers, Research Note No. 40 2001-02, Parliament of Australia

<http://www.aph.gov.au/binaries/library/pubs/rn/2001-02/02rn40.pdf>

Warhurst, J., 2008, The Lobbying Code of Conduct: An Appraisal, Discussion Paper 4/08, Democratic Audit of Australia

http://democratic.audit.anu.edu.au/papers/20080415_warhurst_lobbying.pdf

Last revised July 2013