

Management of the Australian Government's Register of Lobbyists

Department of the Prime Minister and Cabinet

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Canberra ACT
14 February 2018

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Department of the Prime Minister and Cabinet titled *Management of the Australian Government's Register of Lobbyists*. The audit was conducted in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website—<http://www.anao.gov.au>.

Yours sincerely



Grant Hehir
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

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Summary and recommendations

1. Lobbying aims to influence government decision-making (including the making or amendment of legislation, the development or amendment of government policy or programs, the awarding of government contracts or grants or the allocation of funding).¹ Lobbyists' efforts to influence government decision-making may be in their own interest or in the interests of their employer, their clients or a group of related entities.

2. Contact between Australian Government representatives and lobbyists is managed by the Australian Government's *Lobbying Code of Conduct* (the Code), which was introduced in 2008 to establish 'rules for contact'² between lobbyists and Government representatives and reissued in 2013, and established 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.³

3. Further, the Code acknowledges that:

there is a public expectation that lobbying activities will be carried out ethically and transparently, and that Government representatives who are approached by lobbyists can establish whose interests they represent so that informed judgments can be made about the outcome they are seeking to achieve.⁴

4. The Code does not apply to all lobbyists who have contact with Government representatives. Lobbyists who conduct lobbying activities on behalf of a client (third-party lobbyists) are required to apply to the Secretary of the Department of the Prime Minister and Cabinet (PM&C or the department) to have their details included on the Register of Lobbyists (the Register).⁵ Other lobbyists—such as employees of an in-house government relations team or a non-profit organisation, people making 'occasional' representations as part of their professional roles and trade delegates—are not required to register or comply with the Code.

5. The rationale for establishing different requirements is that in the case of employees of major companies or peak industry bodies 'the very nature of [the lobbyist's] employment means that it will be clear to ministers and others whose interests they will be representing'.⁶ Other exemptions apply so the Code does not 'impede day-to-day communications with government'.⁷ By requiring third-party lobbyists to register their details (including the identities of their clients) and complete a statutory declaration attesting to their integrity, honesty and independence from politics, the government aims to provide transparency to Government representatives about whose interests the third-party lobbyist represents.

1 The Department of the Prime Minister and Cabinet, *Lobbying Code of Conduct*, 2013, Clause 3.4. Refer to <www.lobbyists.pmc.gov.au> [accessed 25 October 2017].

2 J.Faulkner, *Media release 09/2008: Register of Lobbyists*, 2 April 2008.

3 *Lobbying Code of Conduct*, 2013, Clause 1.4.

4 *ibid.*, clause 1.3.

5 *ibid.*, clause 5.3

6 J.Faulkner, *Ministerial Statement-Lobbying Code of Conduct and Register of Lobbyists*, 13 May 2008.

7 *ibid.*

6. PM&C is responsible for: administering the registration of lobbyists; confirming the accuracy of the information provided by registered lobbyists; receiving reports and assessing breaches under the Code; and removing lobbyists from the Register.

7. The Register is a publicly available, searchable database of the names of organisations, their registered lobbyists and their clients.⁸ As at 1 February 2018, the Register listed 253 organisations with a total of 566 lobbyists (539 unique lobbyists⁹) and 1813 clients (1735 unique clients).¹⁰

Audit objective and criteria

8. The objective of the audit was to assess the effectiveness of the Department of the Prime Minister and Cabinet's management of the Australian Government's Register of Lobbyists.

9. To form a conclusion against the audit objective, the following high-level criteria were applied:

- Have sound administration processes been established to update and maintain the Register?
- Has a fit-for-purpose risk-based approach to managing compliance been established?
- Are effective monitoring and reporting arrangements in place?

Conclusion

10. While the Department of the Prime Minister and Cabinet's arrangements to manage the Australian Government's Register of Lobbyists are consistent with the framework agreed by Government, improvements could be made to communications, compliance management and evaluation for the Code and the Register. It would also be timely to review the appropriateness of the current arrangements and Code requirements in supporting the achievement of the objectives established for the Code.

11. PM&C has established appropriate administration arrangements to update and maintain the Register. Limitations of the current database used to support the operation of the Register make it difficult for the department to obtain an appropriate level of assurance over information quality. The planned replacement of the existing database provides an opportunity for the department to strengthen quality assurance processes and to improve the efficiency of administrative processes, for example by reducing existing duplicative and manual processes. Further, the development of a suitable strategy to raise awareness of Code and Register requirements would better support voluntary compliance by lobbyists.

12. PM&C's delivery of a low level of compliance activity reflects the original decision of government. The effectiveness of the department's compliance monitoring approach has been reduced by the lack of strategy around advice to Government representatives of their compliance monitoring responsibilities and PM&C's reliance on reports of non-compliance to drive compliance activities. Further, the approach adopted to manage compliance has not been

8 The Register can be accessed at <www.lobbyists.pmc.gov.au>.

9 If a lobbyist is employed by more than one organisation, the Register reports the lobbyist multiple times.

10 If a client has employed more than one lobbyist, the Register will report the client multiple times.

informed by an assessment of risks. While each allegation of non-compliance the ANAO identified had been assessed, departmental records of assessments were not well maintained or collated to inform future compliance activity. Given the regime has been in place for close to a decade, it is timely for the department to consider whether the compliance management arrangements for the Code and Register are appropriate.

13. The department has not established effective performance monitoring and reporting arrangements. Listing lobbyists and their clients on the Register for reference by Government representatives and other stakeholders contributes to the achievement of the Code's objectives. The Register does not, on its own, provide transparency into the integrity of the contact between lobbyists and Government representatives or the matters discussed. Performance monitoring and reporting arrangements should be strengthened to inform internal and external stakeholders about the extent to which policy objectives are being met.

Supporting findings

Administering the Register

14. Registration requirements are effectively communicated to lobbyists if they are aware of the need to register or are registered. A strategy to raise the lobbying community's awareness of the Code would help mitigate the risk of non-compliance by unregistered lobbyists.

15. Outside of mandatory reporting periods, there is scope for PM&C and for registrants to update the Register in a more timely manner. For example, ANAO analysis showed that 39 per cent of new applications were not processed within stated timeframes between July 2016 and August 2017 and lobbyists were not reporting changes within ten days as required by the Code.

16. A quality assurance process has been established by PM&C to manage the integrity of information recorded in the Register of Lobbyists, but due diligence arrangements relating to former Government representatives could be strengthened and the accuracy of information on the Register between bi-annual reporting periods improved.

Managing compliance

17. The department's approach to managing compliance conforms to the approach to compliance monitoring decided by government in 2008. PM&C could not demonstrate that it had undertaken an assessment of compliance risks or provided advice about the ongoing appropriateness of this approach since its implementation.

18. PM&C has not developed a communication plan or strategy to raise Government representatives' awareness of their responsibilities for monitoring lobbyists' compliance with the Code. While the department has taken some steps to raise awareness, such as letters to Secretaries, establishing a more structured approach to the delivery of awareness-raising activities to Government representatives about the Code and their compliance monitoring responsibilities would provide greater assurance that compliance is being monitored as anticipated by the Code.

19. It was not clear from the department's records how many alleged instances of non-compliance had been reported since 2013. For each of the 11 instances of alleged

non-compliance identified by the ANAO, the department had conducted an assessment and taken steps to address the alleged non-compliance. The department did not remove or suspend any these 11 registrants or use this information to inform future compliance activity.

Performance monitoring and reporting

20. PM&C has not established a framework to measure and report outcomes from the operation of the Code to inform a view on whether the policy objectives of the regime are met.

21. The key reporting mechanism is the Register of Lobbyists. On its own, the Register does not inform stakeholders of the extent to which all policy objectives established for the Code have been achieved. The range of information reported by other jurisdictions about the actions and impact of their regimes to regulate lobbying indicates that information provided to stakeholders of the Australian Government's Code could be improved.

22. PM&C has not developed an evaluation plan/strategy to assess whether policy objectives have been met and to identify key learnings to inform advice to government on potential refinements to current policy settings. Parliamentary inquiries and an internal audit that the department has relied on for insights into the extent the policy objectives have been met have been focused on the operation of the Register as a mechanism for providing transparency to Government representatives rather than an evaluation of the success of the Code in achieving all its policy objectives.

Recommendation

Recommendation no. 1

Paragraph 4.15

The Department of the Prime Minister and Cabinet review the appropriateness of the current arrangements and Code requirements in supporting the achievement of the objectives established for the Code. To better support the ongoing regulation of lobbyists, PM&C should:

- (a) implement a strategy to raise lobbyists' and Government representatives' awareness of the Code and their responsibilities;
- (b) assess risks to compliance with the Code and provide advice on the ongoing sufficiency of the current compliance management framework; and
- (c) develop a set of performance measures and establish an evaluation framework to inform stakeholders about the extent to which outcomes and broader policy objectives are being achieved.

Department of the Prime Minister and Cabinet's response: *Agreed in part.*

Summary of the Department of the Prime Minister and Cabinet's response

23. The proposed audit report was provided to the Department of the Prime Minister and Cabinet. A formal response was received (see Appendix 1) and the following summary was provided.

The Department of the Prime Minister and Cabinet (PM&C) welcomes the overarching finding that the arrangements to manage the Register of Lobbyists are consistent with the framework agreed by the Government. The audit also recognises that PM&C's delivery of compliance monitoring is consistent with the level of compliance sought by the Government when establishing the Register.

The Lobbying Code of Conduct, as established in 2008 and continued by successive Governments, is an administrative initiative, not a regulatory regime. The Code establishes a publicly available Register of third-party lobbyists and their clients, so that Ministers, their staff and government officials can establish whose interests are being represented by a given lobbyist. Unlike some other Australian jurisdictions, the Australian Government Register of Lobbyists and the associated Code are not enshrined in legislation.

PM&C appreciates the suggestions of further enhancements to the administrative approach and agrees in part to the single recommendation of the audit report, noting the multi-part approach taken. Importantly though, some elements of the recommendation are better suited to a legislatively-based regime that regulates all lobbyists, i.e not just those employed by third-parties. As such, PM&C will consider how best to implement the recommendation sub-points consistent with the spirit and intent of the policy objectives of the Register of Lobbyists as an administrative scheme.

PM&C has allocated resources to modernise the IT system which underpins the Register. PM&C agrees with, and is intending to implement, a strategy to raise lobbyists' and Government representatives' awareness of the Code and their responsibilities, following the completion of the IT system redevelopment. PM&C will also develop a set of performance measures and establish an evaluation framework as part of the redeveloped system, to better inform stakeholders.

Key learnings

24. Below is a summary of key learnings and areas for improvement identified in this audit report that may be considered by other Commonwealth entities when designing and implementing a regulatory framework.

Government and risk management

- Entities should establish a risk-based approach to inform compliance monitoring and management functions.

Performance and impact management

- Entities should develop early in the program design phase a set of performance measures that inform stakeholders about the extent to which objectives have been met.
- Entities should develop early in the program design phase fit-for-purpose evaluation strategies to regularly review the appropriateness of settings for long-term functions.
- Entities should undertake timely reviews of long-running programs/activities to ensure they remain appropriately calibrated to achieve their intended policy outcomes in the most effective and efficient manner.

Audit findings

1. Background

Introduction

1.1 Lobbying aims to influence government decision-making (including the making or amendment of legislation, the development or amendment of government policy or programs, the awarding of government contracts or grants or the allocation of funding).¹¹ Lobbyists' efforts to influence government decision-making may be in their own interest or in the interests of their employer, their clients or a group of related entities.

Regulating the lobbying of Australian Government representatives

1.2 The Australian Government first sought to regulate lobbying of Australian Government representatives in 1983, with the introduction of a voluntary Lobbyists Registration Scheme. The scheme was abolished in 1996. Subsequently, a *Lobbying Code of Conduct* (the Code) was introduced in 2008 by the Australian Government to establish 'rules for contact'¹² between lobbyists and Government representatives and reissued in 2013. The preamble of both the 2008 and 2013 Codes outlined that:

the *Lobbying Code of Conduct* 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. Lobbyists and Government representatives are expected to comply with the requirements of the [Code] in accordance with their spirit, intention and purpose.¹³

1.3 Further, the Code acknowledges that:

there is a public expectation that lobbying activities will be carried out ethically and transparently, and that Government representatives who are approached by lobbyists can establish whose interests they represent so that informed judgments can be made about the outcome they are seeking to achieve.¹⁴

1.4 The Code does not apply to all lobbyists who have contact with Government representatives. Lobbyists who conduct lobbying activities on behalf of a client (third-party lobbyists) are required to apply to the Secretary of the Department of the Prime Minister and Cabinet (PM&C or the department) to have their details included on the Register of Lobbyists (the Register).¹⁵ Other lobbyists—such as employees of an in-house government relations team or a non-profit organisation, people making 'occasional' representations as part of their professional roles and trade delegates—are not required to register or comply with the Code.

1.5 The rationale for establishing different requirements is that in the case of employees of major companies or peak industry bodies 'the very nature of [the lobbyist's] employment means

11 The Department of the Prime Minister and Cabinet, *Lobbying Code of Conduct*, 2013, Clause 3.4. Refer to <www.lobbyists.pmc.gov.au> [accessed 25 October 2017].

12 J.Faulkner, *Media release 09/2008: Register of Lobbyists*, 2 April 2008.

13 *Lobbying Code of Conduct*, 2013, p. 1.

14 *Lobbying Code of Conduct* 2013, p. 1, clause 1.3.

15 *Lobbying Code of Conduct*, 2013, p. 1. clause 5.3

that it will be clear to ministers and others whose interests they will be representing'.¹⁶ Other exemptions apply so the Code does not 'impede day-to-day communications with government'.¹⁷ By requiring third-party lobbyists to register their details (which include the identities of their clients), the government aims to provide transparency to Government representatives about whose interests the third-party lobbyist represents.

1.6 The registration process requires each lobbyist to submit an application form which includes a statutory declaration stating that he/she: has never been sentenced to a term of imprisonment of 30 months or more; has not been convicted, as an adult, in the last ten years, of an offence, one element of which involves dishonesty, such as theft or fraud; and is not a member of a state or federal political party executive, state executive or administrative committee (or the equivalent body). Registered lobbyists also have reporting obligations to meet in order to maintain their registration and must observe prohibitions and the principles of engagement (as outlined in Table 1.1).

Table 1.1: Responsibilities of registered lobbyists

Lobbying Code of Conduct 2013 reference	Responsibilities of registered lobbyists
Clause 5.3	Applying to have his or her lobbyist's details recorded in the Register of Lobbyists. To apply, lobbyists must complete the online application form.
Clause 5.4	Advising the Secretary ^a of any changes to their details as soon as practicable and within 10 business days of the change occurring.
Clause 5.5 and 5.6	Confirming their details within 10 business days of 31 January and 30 June each year. At 30 June, this includes submitting a new statutory declaration.
Clause 7	Not lobbying on any matter that they had official dealings with when they were a Government representative. For lobbyists who were formerly: <ul style="list-style-type: none"> Ministers/Parliamentary Secretaries—prohibitions last for 18 months and apply to official dealings in the 18 months prior to leaving office; and persons employed at advisor level (or above) in the offices of Ministers or Parliamentary Secretaries; members of the Australian Defence Force at Colonel level or above; and persons employed in the Senior Executive Service—prohibitions last for 12 months and apply to official dealings in the 12 months prior to leaving office.
Clause 8	Observing principles of engagement, such as: <ul style="list-style-type: none"> not engaging in any conduct that is corrupt, dishonest or illegal, or unlawfully cause or threaten any detriment; checking the truth and accuracy of statements and information; and informing Government representatives about the matters they have been engaged to lobby on and by whom.

Note a: This reference is to the Secretary of the Department of the Prime Minister and Cabinet.

Source: ANAO analysis of the *Lobbying Code of Conduct 2013*.

¹⁶ J.Faulkner, *Ministerial Statement-Lobbying Code of Conduct and Register of Lobbyists*, 13 May 2008.

¹⁷ *ibid*.

1.7 The department maintains the Register—a publicly available, searchable database that can be used to check who is registered (by organisation and by lobbyist) and whose interests they represent (by registered client).¹⁸ As at 1 February 2018, the Register listed 253 organisations with a total of 566 lobbyists (539 unique lobbyists¹⁹) and 1813 clients (1735 unique clients).²⁰ The database’s IT system supporting the Register is obsolete and the department anticipates that the system will be replaced during 2017–18.

Responsibilities of Government representatives

1.8 Government representatives are defined by the Code as: Ministers, Parliamentary Secretaries and people employed or engaged by a Minister or a Parliamentary Secretary under the *Members of Parliament (Staff) Act 1984*; agency heads, officers, consultants and contractors engaged under the *Public Service Act 1999*; and members of the Australian Defence Force.²¹

1.9 The Code establishes that Government representatives are to monitor lobbyist’s compliance with the Code (by checking the Register). This responsibility includes ensuring that they have no contact with unregistered lobbyists (Clause 4) and reporting any identified breaches of the Code (Clause 9) to the department.

Regulation of lobbying activity in Australia and internationally

1.10 Over the last decade, all Australian state and territory jurisdictions except the Northern Territory have established regimes to place controls around lobbying activity. Western Australia was the first jurisdiction to introduce a regime and the initial design of the Australian Government’s Code and Register was based on Western Australia’s March 2007 *Contact with Lobbyists Code*.

1.11 Regimes to regulate lobbying have also been established in other countries. Of the 35 member countries in the Organisation for Economic Cooperation and Development, Australia is one of 15 countries that have established regimes to govern lobbying activity.²² The other 14 countries with lobbying regimes are Austria, Canada, Chile, France, Germany, Hungary, Israel, Italy, Mexico, Netherlands, Poland, Slovenia, the United Kingdom and the United States of America.

1.12 Across Australia lobbying is regulated using either a Code of Conduct (Australian Capital Territory, Tasmania and Victoria) or a legislative approach (New South Wales, South Australia,

18 The Register can be accessed at <www.lobbyists.pmc.gov.au>.

19 If a lobbyist is employed by more than one organisation, the Register reports the lobbyist multiple times.

20 If a client has employed more than one lobbyist, the Register will report the client multiple times.

21 The Code does not apply to Members of Parliament and Senators who are not Ministers or part of the government and government appointees.

22 Organisation for Economic Cooperation and Development, *Lobbyists, Government and Public Trust Volume 3: Lessons Learned from Implementing the OECD Principles on Transparency and Integrity in Lobbying: Highlights*, 2014, Figure 4, p. 18. Available from <<http://www.oecd.org/gov/ethics/lobbying.htm>> [accessed 18 October 2017].

Queensland and Western Australia).²³ A key difference between these two approaches is that legislation establishes mandatory standards and requirements and supports regulators to impose penalties on lobbyists who do not comply.

1.13 PM&C's role as the regulator of lobbying of Government representatives is specified in:

- the *Lobbying Code of Conduct 2013*—the Secretary is responsible for:
 - receiving and assessing applications to register (Clauses 5.3, 10.1 and 10.6(a));
 - ensuring that registered lobbyists provide confirmation that their details are accurate (through regular reporting) (Clauses 5.4–5.6);
 - receiving reports of, and assessing breaches under the Code (Clause 9.1);
 - removing registered lobbyists from the Register if the lobbyist has contravened the Code, provided inaccurate registration details, failed to answer questions in a timely manner regarding their registration details or lobbying activities or not updated their registration details in a timely manner (Clauses 5.7, 10.3 and 10.6 (b)); and
 - applying natural justice principles prior to removing a lobbyist from the register (Clause 10.5); and
- a 2008 decision by the Prime Minister that the department's role in monitoring compliance would not be 'significant'.

Audit approach

1.14 The Register of Lobbyists was selected for audit because it is a key part of the Australian Government's ethical infrastructure and the implementation of the Register and the underpinning Lobbying Code of Conduct has not been examined by the ANAO previously. In particular, by examining the management of the Register the ANAO aimed to: provide assurance, or otherwise, that the Register is accurate, complete and that it is being managed in a manner that addresses policy objectives; establish whether steps have been taken to ensure government representatives are aware of the Register of Lobbyists and whether representatives refer to it; and improve public information regarding registrants' compliance with the Code. In addition, the publication of the audit brings attention to the need for government representatives to be aware of the Code and their obligation to not meet with persons who should be, but are not, registered.

1.15 The objective of the audit was to assess the effectiveness of the Department of the Prime Minister and Cabinet's management of the Australian Government's Register of Lobbyists.

23 Western Australia's *Integrity (Lobbyists) Act 2016* came into effect in December 2016. The purpose of the new legislation is to promote and enhance public confidence in the transparency, integrity and honest of dealings between government representatives and lobbyists by providing for the registration of people who undertake lobbying activity, issuing a code of conduct to registered persons, and prohibiting payments or rewards that depend on the outcomes of lobbying activities. The legislation: imposes penalties for lobbying activity by unregistered persons; disqualifies current and former government representatives from registering or listing as a lobbyist for twelve months after they cease to hold office; allows conditions to be attached to a registration or listing; and prohibits agreements with success fees with the State Treasurer allowed to recover any success fees as a civil debt.

1.16 To form a conclusion against the audit objective, the following high-level criteria were applied:

- Have sound administration processes been established to update and maintain the Register?
- Has a fit-for-purpose risk-based approach to managing compliance been established?
- Are effective monitoring and reporting arrangements in place?

1.17 The audit examined PM&C's management of the Register of Lobbyists, including an assessment of the extent to which the policy objectives established for the *Lobbying Code of Conduct 2013* are being achieved. Lobbyists and lobbying activity not covered by the Code and the Register were not examined by the audit.

1.18 In conducting the audit, the ANAO reviewed the Register of Lobbyists, PM&C's files and documents relating to the management of the Code and Register and interviewed departmental staff. The ANAO analysed data from the Register as well as access and usage data for the website (www.lobbyists.pmc.gov.au).

1.19 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$178 150.

1.20 Team members for this audit were Sally Ramsey and Clyde Muthukumaraswamy.

2. Administering the Register

Areas examined

The ANAO examined the arrangements established by the Department of the Prime Minister and Cabinet (PM&C) to update and maintain the Register of Lobbyists, including the: communication of registration requirements; timeliness of Register updates; and quality assurance of information included on the Register.

Conclusion

PM&C has established appropriate administration arrangements to update and maintain the Register. Limitations of the current database used to support the operation of the Register make it difficult for the department to obtain an appropriate level of assurance over information quality. The planned replacement of the existing database provides an opportunity for the department to strengthen quality assurance processes and to improve the efficiency of administrative processes, for example by reducing existing duplicative and manual processes. Further, the development of a strategy to raise awareness of Code and Register requirements would better support voluntary compliance by lobbyists.

Areas for improvement

The ANAO has suggested that the department:

- develop a strategy to raise the awareness of the Code amongst Government representatives and the lobbying community; and
- consider, as part of the design of the proposed replacement database, integrating the registration, quality assurance and approval processes into the Register.

Are registration requirements effectively communicated?

Registration requirements are effectively communicated to lobbyists if they are aware of the need to register or are registered. A strategy to raise the lobbying community's awareness of the Code would help mitigate the risk of non-compliance by unregistered lobbyists.

2.1 The establishment of communications or awareness-raising strategies helps to ensure that lobbying organisations and individuals are aware of their obligations under the *Lobbying Code of Conduct 2013*. Before contacting Government representatives, lobbyists should be registered and the name of the client(s) whose interests they are representing recorded on the Register.²⁴

Raising lobbyists' awareness of registration requirements

2.2 The dedicated Register of Lobbyist website (www.lobbyists.pmc.gov.au) is the primary means used by PM&C to inform lobbyists of their obligations, including their responsibility to register. PM&C has not developed a strategy to raise lobbyists' awareness of the website, the Code and the Register. The risk that lobbyists are not aware of the Code and are not aware of the

²⁴ An exception to this requirement is made if disclosure of the relationship between a lobbyist and a client may result in speculation about a pending, but as yet unannounced, transaction, a registered lobbyist may withhold listing the client on the Register (Clause 5.2).

requirement to register is partially mitigated though by the existence of lobbying regimes in all Australian states and the Australian Capital Territory.

2.3 In those circumstances where websites are used to communicate program or regulatory material, the analysis of website usage data can provide useful feedback about which information is being accessed by stakeholders. The department does not currently analyse usage data for the lobbying website. In the absence of departmental analysis, the ANAO reviewed the 49 705 website sessions that occurred between January 2016 and September 2017. Of the 49 705 sessions viewed, the information page for lobbyists—‘Who needs to register’—was one of the top ten pages accessed (2883 views or six per cent of sessions). The routine analysis of webpage access to identify trends in sessions accessing the ‘Who needs to Register’ page would assist PM&C to inform the development and refinement of communication strategies and approaches.

Advice regarding registration obligations during the application process

2.4 Through the registration form, PM&C appropriately advises registrants of their responsibilities by directing them to read the Code and to agree with the Code’s requirements prior to submitting their registration. The department also advises registrants by email when the registration has been approved (or suspended awaiting further information being provided or declined).

Ongoing advice about registration obligations

2.5 PM&C assists registered organisations and lobbyists to meet their registration obligations by sending reminders about mandatory reporting obligations under Clauses 5.4, 5.5 and 5.6 via a quarterly email.²⁵ ANAO analysis of Register data indicated that registered organisations generally complied with their responsibilities under Clause 5.5 and 5.6 but there was scope for improvement in relation to Clause 5.4 reporting responsibilities.²⁶

2.6 To address these reporting obligations, lobbying organisations must log-in at least twice per year to their registration record on the lobbying webpage—data from the website included 5021 visits to the log-in portal (approximately 21 visits per lobbying organisation). The ANAO did not examine the reason for each visit, but the number of visits per organisation may warrant further review by the department to assess the administrative burden on lobbying organisations.

25 Refer to Table 1.1.

26 Compliance with clause 5.4 of the Code is discussed in paragraph 2.15 and 2.16.

Is the Register of Lobbyists updated in a timely manner?

Outside of mandatory reporting periods, there is scope for PM&C and for registrants to update the Register in a more timely manner. For example, ANAO analysis showed that 39 per cent of new applications were not processed within stated timeframes between July 2016 and August 2017 and lobbyists were not reporting changes within ten days as required by the Code.

2.7 Timely updating of the Register underpins the effective operation of the Code and supports Government representatives to monitor lobbyists' compliance. While the Code does not establish a processing timeframe, the department includes processing timeframes on the website's Frequently Asked Questions page.

2.8 The department's website advises that the processing timeframe is five days—amended from two days in late August 2017. The achievement of advertised processing times is contingent on the lobbyist submitting required information, such as a statutory declaration, to enable PM&C to update the Register.

Timeliness of new registration approvals

2.9 The department does not currently monitor whether these timeframes are being met. To assess timeliness of PM&C's registration processes, the ANAO examined 67 new registration applications that had been received between July 2016 and August 2017. All 67 applications were received before the department amended its target processing times. As outlined in Table 2.1, the department met the applicable processing time (two days) for 41 new applications (61 per cent). If the current five day processing period was in place, this would have been met by the department for 57 applications (85 per cent).

Table 2.1: Timeliness of processing new registrations, July 2016 to August 2017

Timeframe	2016–17	2017–18	Total
Less than 2 days	37 (63%)	4 (50%)	41 (61%)
Between 2 and 5 days	13 (24%)	2 (25%)	16 (24%)
More than 5 days	9 (13%)	2 (25%)	10 (15%)
Total	59	8	67

Source: ANAO analysis of new registration requests in 2016–17 and 2017–18.

2.10 The ANAO also examined the total time that elapsed between the lobbyist applying to register and the department approving the application. The time between receipt of the application and registration (elapsed time) was greater than five days for 41 (61 per cent) of the 67 applications examined. In each case, the department was waiting for the applicant to submit required documents by email or mail. In the context of the anticipated database enhancements, there would be merit in considering options to reduce processing timeframes, such as integrating the statutory declaration requirements into the application form.

Timeliness of Register updates

Mandatory bi-annual reporting

2.11 To remain registered, lobbyists must address the mandatory reporting responsibilities set out in Clause 5.5 and 5.6 of the Code. Lobbyists that do not submit their reports in a timely manner will be: issued a reminder when the report is seven days overdue; and removed from the register when the report is 14 days overdue.²⁷ These processes are automated—supported by controls within the Register’s database. The department can reverse suspensions upon receipt of the required information.

Reporting a change of details

2.12 In addition to the bi-annual reporting requirements outlined in Clause 5.5 and 5.6, Clause 5.4 of the Code requires registrants to update the Register within ten days of their details changing. For example, changes may be due to an organisation hiring additional lobbyists, the resignation of existing lobbyists or a new business address. Under the Code, lobbying organisations can be removed from the Register if their registration details are not updated in a timely manner and timely reporting of changes to lobbyists’ details helps maintain the accuracy of the Register.

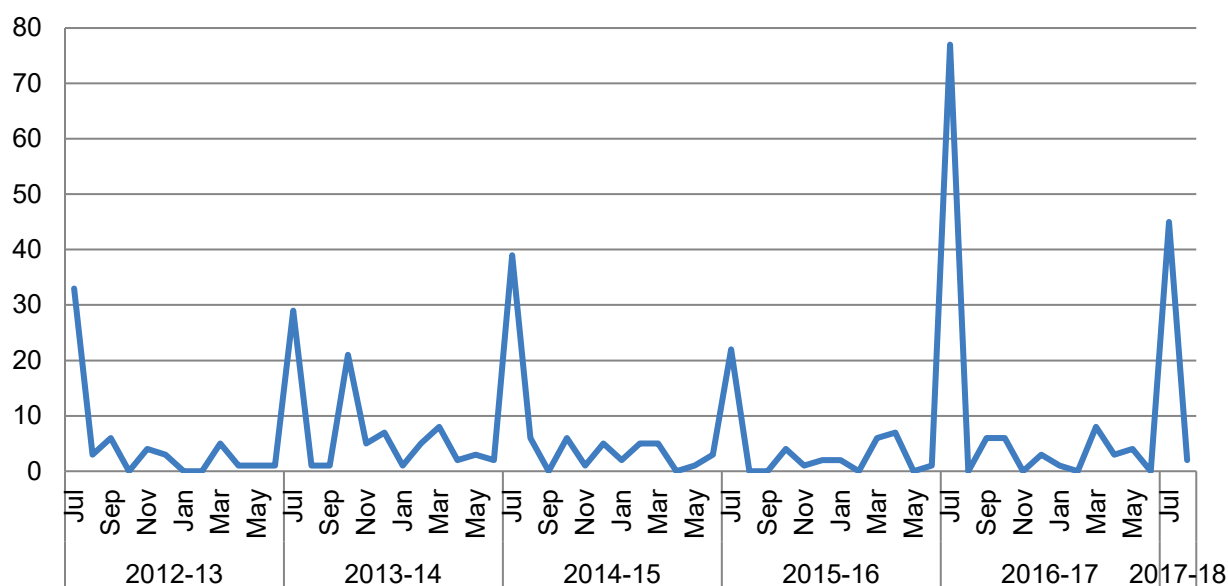
2.13 PM&C does not currently monitor lobbyists’ compliance with the requirements set out in Clause 5.4. The ANAO examined data relating to the number of organisations removed from the Register when they no longer have a registered lobbyist.²⁸ This data was examined because it is a proxy indicator of lobbyists’ compliance with the requirement to report changes (in this case, the resignation of a lobbyist) as they occur.

2.14 If lobbying organisations are updating the Register in a timely manner (in accordance with Clause 5.4) we would expect to see little or no difference in the number of suspensions for organisations with zero lobbyists in January/February and July/August than at other times during the year. As shown in Figure 2.1 (on the following page), the number of organisations removed is generally higher after bi-annual reporting with the post-June peaks indicating that it is the requirement that organisations submit a new statutory declaration for each lobbyist that triggers reporting of lobbyists that have left the agency. The alignment between the increase in suspensions for organisations with no registered lobbyists and the mandatory reporting periods suggests that changes are not reported until records must be updated to avoid suspension or removal from the Register.

27 Registrations are suspended, which allows the registration to be reactivated if the reporting requirements are subsequently met.

28 Each organisation must have at least one lobbyist registered.

Figure 2.1: Organisations that were removed from the Register between July 2012 and August 2017 as the organisation no longer had a lobbyist registered



Source: ANAO analysis of departmental data.

Has a quality assurance process been established to ensure the integrity of information recorded in the Register of Lobbyists?

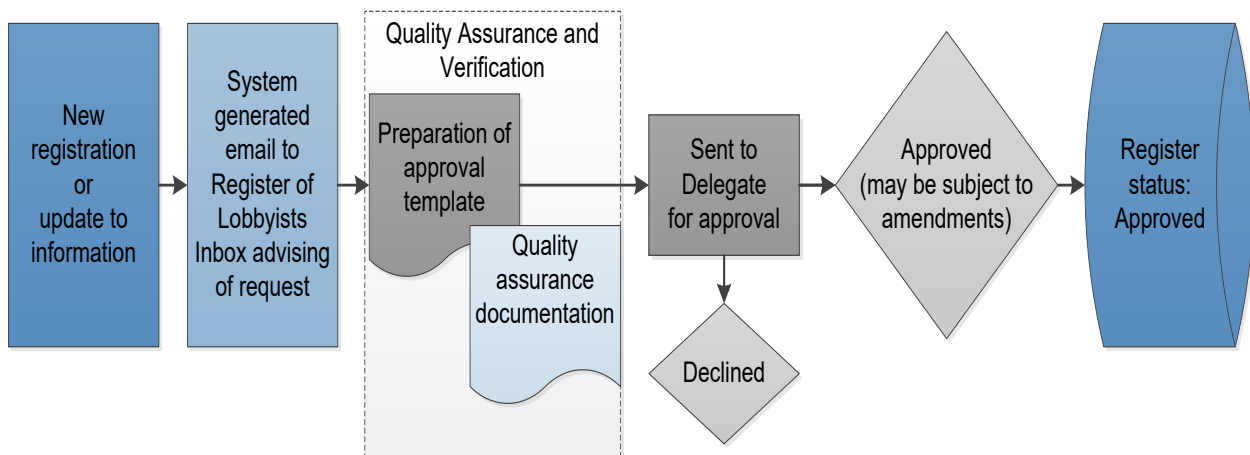
A quality assurance process has been established by PM&C to manage the integrity of information recorded in the Register of Lobbyists, but due diligence arrangements relating to former Government representatives could be strengthened and the accuracy of information on the Register between bi-annual reporting periods improved.

2.15 Departmental guidance (the *Administrator's Manual* and *Guidance for Checking Application Forms*) has been established to inform officers how the details submitted for inclusion on the Register are to be verified.²⁹ The verification process for new registration applications and for updates to information currently on the Register is outlined in Figure 2.2 (on the following page).

2.16 The ANAO analysed the department's application of quality assurance processes for all 67 new registration applications lodged between July 2016 and August 2017. In each case, PM&C had documented its quality assurance and verification processes alongside the record of the decision made. Building verification and approval processes into the proposed new database would address a gap in the Register's administration functions as the department currently manually copies application details from the Register to enable verification work and the decision to be recorded.

²⁹ The department can approve or remove a registration, but not amend the details of a registration submitted to the Register. Under current arrangements, details can only be amended by the lobbying organisation by accessing their registration record on the lobbying webpage.

Figure 2.2: PM&C's quality assurance process for new registrations and updates



Source: ANAO analysis of departmental documentation.

2.17 Where applications were approved subject to amendments being made by the registrant, the department did not follow-up that the required changes have been made. Implementing follow-up processes would provide greater assurance that the information contained on the Register is accurate.

Former Government representatives

2.18 The 2013 internal audit of the Register recommended that the department undertake explicit due diligence checks over lobbyist's disclosure of their former Government representative status. In response to this recommendation, the department established a new process as part of the checks it conducts for a new applicant's registration.

2.19 The new process (introduced in June 2013) requires departmental officers to obtain assurance from each former Government representative who is applying to register within the prohibition period (Clause 7)³⁰ that he/she is aware of the lobbying prohibitions that apply. Of the 21 new registration applications lodged by former Government representatives between June 2013 and June 2016, emails acknowledging that prohibitions applied were obtained from 15 lobbyists. There would be merit in the department establishing a process to follow-up missing assurances in the future and considering streamlining its processes to obtain assurance from former Government representatives, for example, by including the assurance as part of the statutory declaration.

³⁰ The details of Clause 7 were outlined previously in Table 1.1.

3. Managing compliance

Areas examined

The ANAO examined whether the Department of the Prime Minister and Cabinet (PM&C) has: implemented a fit-for-purpose, risk-based approach to compliance management; communicated compliance monitoring responsibilities to Government representatives; and assessed alleged instances of non-compliance.

Conclusion

PM&C's delivery of a low level of compliance activity reflects the original decision of government. The effectiveness of the department's compliance monitoring approach has been reduced by the lack of strategy around advice to Government representatives of their compliance monitoring responsibilities and PM&C's reliance on reports of non-compliance to drive compliance activities. Further, the approach adopted to manage compliance has not been informed by an assessment of risks. While each allegation of non-compliance the ANAO identified had been assessed, departmental records of assessments were not well maintained or collated to inform future compliance activity. Given the regime has been in place for close to a decade, it is timely for the department to consider whether the compliance management arrangements for the Code and Register are appropriate.

Areas for improvement

The ANAO has suggested the department:

- assess risks to compliance with the Code and provide advice on the sufficiency of the current compliance management framework;
- develop an awareness-raising strategy to inform Government representatives of their responsibilities under the Code; and
- strengthen administration around the assessment of allegations of non-compliance.

Has a fit-for-purpose risk-based approach to compliance management been established?

The department's approach to managing compliance conforms to the approach to compliance monitoring decided by government in 2008. PM&C could not demonstrate that it had undertaken an assessment of compliance risks or provided advice about the ongoing appropriateness of this approach since its implementation.

3.1 Compliance with the Code supports public confidence in the integrity and honesty of interactions between lobbyists and Government representatives. When the Code was established in 2008, the Prime Minister decided that the department would not have 'any significant role in monitoring compliance'. As noted in paragraph 1.9, the Code places the onus on Government representatives to monitor lobbyists' compliance with the Code and to report non-compliance.³¹

31 The steps taken by the department to ensure that government representatives are aware of their responsibility are outlined in paragraphs 3.4–3.7. The department's assessment of allegations of non-compliance is discussed in paragraphs 3.8–3.10.

3.2 The department could not demonstrate that it had assessed the risks to compliance with the Code to confirm the ongoing appropriateness of the original compliance monitoring arrangements. While advice provided to Government by PM&C in relation to proposed additions to the Code had considered the management of compliance, the department was unable to demonstrate that it had provided advice on the sufficiency of the original approach to compliance. As it has been almost ten years since the Code was introduced, it would be timely for the department to assess risks to compliance with the Code and to provide advice regarding the appropriateness of the current arrangements. This advice should consider the approaches to regulating lobbying adopted by other jurisdictions since 2008.

3.3 Case Study 1 outlines some of the approaches adopted by other jurisdictions to monitor compliance.

Case study 1. Monitoring compliance—approaches adopted by other jurisdictions

Lobbying regimes across Australia and in other countries have developed a range of approaches to identify non-compliance. The Victorian and Tasmanian lobbying regulatory regimes apply a similar approach to the Australian Government with Government representatives responsible for monitoring compliance.

Some lobbying regimes, such as those in place in Queensland, New South Wales, Canada and the United Kingdom monitor compliance through a program of proactive verification/audit activities and investigations. For example, the Office of the Commissioner of Lobbying of Canada, conducts monitoring and compliance verification activities to ensure that registrable lobbying activity is properly reported, and information provided by lobbyists is thorough, accurate and complete. Suspected and alleged non-compliance with the *Lobbying Act* and the *Lobbyists' Code of Conduct* is reviewed and, where appropriate, formal investigations are undertaken to ensure that lobbying activities are ethical and transparent. The Commissioner presents findings and conclusions in *Reports on Investigation* submitted for tabling in the Canadian Parliament.

A further example is the compliance monitoring approach established for the lobbying regime in the United States of America. The compliance monitoring approach includes annual reviews of lobbyists' compliance with disclosure requirements. These reviews are conducted by the Government Accountability Office.

Have the compliance responsibilities of Government representatives under the *Lobbying Code of Conduct* been clearly communicated?

PM&C has not developed a communication plan or strategy to raise Government representatives' awareness of their responsibilities for monitoring lobbyists' compliance with the Code. While the department has taken some steps to raise awareness, such as letters to Secretaries, establishing a more structured approach to the delivery of awareness-raising activities to Government representatives about the Code and their compliance monitoring responsibilities would provide greater assurance that compliance is being monitored as anticipated by the Code.

3.4 For the Code to be effective, Government representatives must be aware of their compliance monitoring responsibilities under the Code. PM&C has not established a communication plan or strategy to guide its activities to raise awareness of the Code among Government representatives. Similar to the approach for raising awareness of the Code and the Register among lobbyists³², awareness-raising for Government representatives is conducted primarily through the website (www.lobbyists.pmc.gov.au). The ANAO examined the department's website data to assess whether Government representatives were accessing the website. For the 49 705 website sessions (between January 2016 and September 2017) analysed by the ANAO, the data provided no insight into whether the user was a Government representative.

3.5 Some communication activities have been undertaken with advice provided to:

- Ministers and ministerial staff—the department included information about the Code and the Register in the Prime Minister's August 2016 advice to Ministers and ministerial staff about their responsibilities and obligations. The department advised that similar information is usually provided following elections or with changes in the Ministry; and
- Departmental Secretaries—PM&C wrote to departmental secretaries in November 2016 and again in 2017 to remind them about their obligations under the Code and the Register. Similar correspondence had previously been sent in 2008 when the Code was initially introduced.

3.6 Government representatives have a significant role in regulating lobbyists' compliance with the Code. The effectiveness of this approach to monitoring compliance is underpinned by Government representatives being aware of their responsibilities and checking the Register. The department advised that it is not aware of arrangements that Australian Government departments may have implemented to ensure that officials understand their obligations regarding lobbyists. In addition, the small number of allegations of non-compliance reported³³, and evidence that at least one lobbyist was not aware that their registration (submitted in 2015) had not been approved until mid-2016 but no-one reported the non-compliance, indicates that the department's approach to awareness-raising could be strengthened.

32 Previously discussed in paragraphs 2.2-2.3.

33 Discussed further in paragraph 3.8-3.10.

3.7 There would be benefit in establishing a structured approach to the delivery of awareness-raising activities to provide greater assurance that Government representatives are aware of their compliance monitoring responsibilities. To inform the development of such a strategy there would be merit in the department building its understanding of how Government representatives are being advised of their obligations under the Code and are accessing the website. This could include seeking assurance from Secretaries that information on Code requirements are communicated to senior staff in their organisations.

Have alleged instances of non-compliance been assessed?

It was not clear from the department's records how many alleged instances of non-compliance had been reported since 2013. For each of the 11 instances of alleged non-compliance identified by the ANAO, the department had conducted an assessment and taken steps to address the alleged non-compliance. The department did not remove or suspend any these 11 registrants or use this information to inform future compliance activity.

3.8 PM&C's webpage provides advice and links to enable a potential breach of the Code to be reported to the Secretary. PM&C advised that all reported breaches of the requirements of the Code are investigated and where assessed as 'sufficiently serious' the department will take steps to remove a lobbyist from the Register.³⁴ The Code and the department's *Administrator's Manual* do not, however, specify a process or a timeframe for responding to reported breaches and do not define the nature of a 'sufficiently serious' matter. Establishing guidance about the assessment process would help to ensure that assessment activity is undertaken in a consistent and timely manner.

3.9 It was not clear how many reports had been received by the department since 2013. The records of assessments undertaken, as well as other Code and Register related material, are stored across several records management systems and in the Register of Lobbyists email inbox. As a consequence, the department is not well placed to demonstrate that assessments have been undertaken for all reported instances of non-compliance. There is scope for the department to strengthen record-keeping arrangements for its compliance activities.

3.10 In total, the ANAO identified and examined 11 assessments that the department had undertaken since 2013.³⁵ In each case, the department had assessed the reported instance of non-compliance and had taken actions, such as advising the registrant of their responsibilities under the Code. No registrants have been removed or suspended from the Register due to non-compliance since 2013 and the results of assessments did not inform future compliance activity.

34 Government representatives who are alleged to have breached the Code can be referred to the Australian Public Service Commission for investigation as the breach may also constitute a breach of the Australian Public Service Values and Code of Conduct .

35 It was not possible to cross-check the completeness of this sample. PM&C does not report externally or internally on the number of inquiries undertaken. Further, records of assessments were retained in several locations.

4. Performance monitoring and reporting

Areas examined

The ANAO examined whether the Department of the Prime Minister and Cabinet (PM&C) has: implemented a performance measurement and reporting framework; established reporting arrangements to inform stakeholders; and developed an evaluation strategy to assess whether policy objectives have been met.

Conclusion

The department has not established effective performance monitoring and reporting arrangements. Listing lobbyists and their clients on the Register for reference by Government representatives and other stakeholders contributes to the achievement of the Code's objectives. The Register does not, on its own, provide transparency into the integrity of the contact between lobbyists and Government representatives or the matters discussed. Performance monitoring and reporting arrangements should be strengthened to inform internal and external stakeholders about the extent to which policy objectives are being met.

Recommendation

The ANAO has recommended that the department review whether the existing arrangements are achieving the Code's objectives and better support the ongoing regulation of lobbyists by implementing an approach to communications, compliance management and evaluation for the Code and the Register.

Has a performance measurement and reporting framework been established to measure and report outcomes from the *Lobbying Code of Conduct* and its contribution to broader policy objectives?

PM&C has not established a framework to measure and report outcomes from the operation of the Code to inform a view on whether the policy objectives of the regime are met.

4.1 Appropriate and timely performance information strengthens accountability by informing the Parliament and the public about the impact of policy measures. It also assists entities to manage programs and activities for which they are responsible and provides a basis for advice to government.

4.2 As outlined in paragraph 1.2 and 1.3, the Code is intended to:

- promote trust in the integrity of government processes;
- ensure that contact between lobbyists and Government representatives is conducted in accordance with public expectations of transparency, integrity and honesty;
- address a public expectation that lobbying activities will be carried out ethically and transparently; and
- support Government representatives, who are approached by lobbyists, to make informed judgments about the interests lobbyists represent.³⁶

³⁶ *Lobbying Code of Conduct 2013*, p. 1, clause 1.3.

4.3 In addition, the implementation of the Code was intended to 'restore respect for the institutions of government and improve governance across the public sector'.³⁷

4.4 Performance measures have not been developed to inform ongoing monitoring of the operation of the Code and the Register or underpin an assessment of the extent to which the objectives set for the Code and Register, or broader integrity objectives of government, are being achieved.

Have reporting arrangements been established that inform stakeholders of the extent to which policy objectives have been achieved?

The key reporting mechanism is the Register of Lobbyists. On its own, the Register does not inform stakeholders of the extent to which all policy objectives established for the Code have been achieved. The range of information reported by other jurisdictions about the actions and impact of their regimes to regulate lobbying indicates that information provided to stakeholders of the Australian Government's Code could be improved.

Internal reporting

4.5 PM&C advised that its Executive is briefed on matters relating to the Code and Register in preparation for Senate Estimates. The ANAO's analysis of the department's assessments of alleged instances of non-compliance indicated that the outcomes of these assessments were brought to the attention of senior officers.

Internal audit of the department's administration of the Register

4.6 The department identified the Register for review by its internal audit function in 2013 to determine whether there were sufficient controls in place to support the accuracy and completeness of the Register. The internal audit report found:

- there was comprehensive procedural guidance in place, albeit updates were needed and officers were aware of the current processes required to administer the Register;
- across a sample of 25 lobbyist organisations, there were 30 instances of non-compliance with manual controls identified. Non-compliance mostly reflected inconsistencies in the maintenance of documentation to demonstrate performance of due diligence procedures; and
- password requirements for users of the Register were not in line with Australian Government requirements.

4.7 Three recommendations were made that were designed to improve the administration of the register by: updating administrative guidance; addressing issues identified with due diligence checks; and strengthening password controls. PM&C reported to its Audit Committee on the implementation of each of the three recommendations, with the Committee agreeing to close the recommendations on 31 July 2015.

37 J.Faulkner, *Ministerial Statement-Lobbying Code of Conduct and Register of Lobbyists*, 13 May 2008.

External reporting

4.8 Departmental reporting about the operation of the Code and the Register in the department's 2015–16 Annual Report outlined the number of registered lobbyists.³⁸ The department's most recent annual report (2016–17) did not contain any specific information relating to the department's administration of the Register.

4.9 As outlined in paragraph 4.2, the implementation of the Code had several objectives. Publishing the Register on the lobbying website addresses one of those objectives—providing transparency to Government representatives, who are approached by lobbyists, about the interests a registered lobbyist represents. However, it is not clear from the information on the Register whether the other objectives of the Code have been met.³⁹ For example, the Register does not inform the public about the ethics or transparency of the lobbying activity that has been undertaken.

4.10 A suggestion made by the Senate Finance and Public Administration References Committee to improve transparency (made in its March 2012 report, *The Operation of the Lobbying Code of Conduct and the Lobbyist Register*) by informing the public of breaches of the Code has not yet been implemented. Assurance that contact between lobbyists and Government representatives has been conducted in accordance with public expectations of transparency, integrity and honesty has been limited to departmental responses to questions, in particular about alleged breaches of the Code, at Senate estimates.

4.11 By way of comparison, Table 4.1 summarises the external reporting arrangements established for the lobbying regulatory regimes of the Australian states, the Australian Capital Territory, the United States of America, Canada and the United Kingdom. In each regime examined, a Register of Lobbyists is central to the external reporting arrangements established. However, external reporting by some jurisdictions also included information about the nature of lobbying activity, contact between Government representatives and lobbyists, trends in lobbying activity, and compliance. In addition, external reporting was also used to provide greater transparency about lobbying contacts and information about the regulator's scrutiny of lobbying activity.

Table 4.1: External reporting by a selection of lobbying regulatory regimes

Jurisdiction	External reporting (register, annual report, other)
New South Wales	<ul style="list-style-type: none"> Annual Report of the New South Wales Electoral Commission. In 2015–16, the report included matters considered in relation to contraventions of the Lobbyists Code. Register of third-party lobbyists. Quarterly reporting of Ministers' diary disclosures. New South Wales Government Department of Planning and Environment publicly lists contacts between staff and third-party lobbyists.

38 Department of the Prime Minister and Cabinet, *Annual Report 2015–16*, p. 12 included information about the total number of registrants.

39 *Lobbying Code of Conduct 2013*, p. 1, paragraph 1.3.

Jurisdiction	External reporting (register, annual report, other)
Queensland	<ul style="list-style-type: none"> • Register of Lobbyists. • Monthly reporting of contacts between lobbyists and Government representatives. • Annual Report of the Queensland Integrity Commissioner. In 2015–16, the Commissioner reported on the extent of lobbying activity and underlying factors impacting trends, requests and meetings in relation to lobbying and the recommendations made following a strategic review by the office into the scope of the regulatory regime. In addition, the Commissioner reported the results from a systematic comparison of lobbying activity reported by lobbyists against other sources (Ministerial diary extracts, entity records).
Victoria	<ul style="list-style-type: none"> • Register of Lobbyists. • Register of Government Affairs Directors. • Annual Report of the Victorian Public Service Commission. The 2016–17 Annual Report included information about the: number of enquiries and applications approved; types of enquiries and applications; enhancements to administrative processes; and number of complaints received.
South Australia	<ul style="list-style-type: none"> • Register of Lobbyists. • Annual Returns outlining who was lobbied, the nature of lobbying and for whom lobbying was undertaken.
Western Australia	<ul style="list-style-type: none"> • Register of Lobbyists. • Annual Report of the Western Australia Public Sector Commission. The 2016–17 Annual Report included information about the number of applications for registration assessed and the compliance management activities undertaken.
Tasmania	<ul style="list-style-type: none"> • Register of Lobbyists.
Australian Capital Territory	<ul style="list-style-type: none"> • Register of Lobbyists.
United Kingdom	<ul style="list-style-type: none"> • Register of Consultant Lobbyists. • Annual Business Plans outlining regulatory activities for the future year and activities conducted against the previous business plan. • Quarterly newsletter—compliance data, analysis of trends and responses to non-compliance.
United States of America	<ul style="list-style-type: none"> • Register of Lobbyists. • Quarterly disclosures of activity. • Semi-annual disclosures of contributions. • Compliance reports issued by the Government Accountability Office.

Jurisdiction	External reporting (register, annual report, other)
Canada	<ul style="list-style-type: none"> • Registry of Lobbyists. • Annual Report of the Office of the Commissioner of Lobbying of Canada. The 2016–17 report provides information on: client service standards; awareness building activities; compliance activities, reviews; and investigations into alleged breaches.

Source: ANAO analysis.

Has an evaluation strategy been developed to inform an assessment of whether policy objectives have been met and identify key learnings to inform updates to the *Lobbying Code of Conduct*?

PM&C has not developed an evaluation plan/strategy to assess whether policy objectives have been met and to identify key learnings to inform advice to government on potential refinements to current policy settings. Parliamentary inquiries and an internal audit that the department has relied on for insights into the extent the policy objectives have been met have been focused on the operation of the Register as a mechanism for providing transparency to Government representatives rather than an evaluation of the success of the Code in achieving all its policy objectives.

4.12 The success of an initiative is determined by the extent to which intended and unintended policy outcomes are achieved and how they affect stakeholders.⁴⁰ For ongoing schemes, periodic evaluation helps to identify better ways to achieve results and to inform policy owners of the effectiveness of the current approach.

4.13 PM&C has not developed an evaluation strategy to inform an assessment of whether policy objectives have been met. The department advised that it relies on periodic internal audit coverage⁴¹ or ad hoc parliamentary inquiries to obtain insights into the extent to which policy objectives are being met. The inquiries that have been undertaken by the Parliament and by the Government are outlined in Table 4.2.

40 Prime Minister and Cabinet, Cabinet Implementation Unit Toolkit: Monitoring, review and evaluation, June 2013. Refer to <www.pmc.gov.au> [accessed 27 October 2017].

41 The *Lobbying Code of Conduct* and the *Register of Lobbyists* have been subject to one internal audit. The 2013 internal audit of the sufficiency of the controls in place to support the accuracy and completeness of the Register was discussed in paragraphs 4.6 and 4.7.

Table 4.2: Inquiries into the Code of Conduct

Year	Review process	Outcome
2008	The Code was referred to the Senate Standing Committee on Finance and Public Administration for inquiry upon its presentation to the Senate for consideration.	<p>The Committee concluded that ‘some aspects of the Code are not wholly supported by some stakeholders’ and due to the early stage of the Code’s implementation ‘it may be some time before it becomes clear if its objectives are realised’.^a On this basis, the Committee recommended that the Senate Standing Committee on Finance and Public Administration conduct an inquiry into the operation of the Code in the second half of 2009.</p> <p>In response to this recommendation, the Government advised that it would ‘keep the operation of the Register under review and consider the need for any changes to the Code and the way the Register operates’ rather than have the Committee conduct a further review’.</p>
2011	The Special Minister of State held a roundtable discussion with lobbyists and released a discussion paper outlining six possible reforms.	<p>In August 2011, the Special Minister of State announced two reforms:</p> <ul style="list-style-type: none"> • requirements for lobbyists to disclose if they were former Government representatives; and • streamlining of regulatory and reporting arrangements—statutory declarations could be submitted electronically and mandatory compliance reporting was reduced (two reports per year rather than four).
2012	The Senate referred an inquiry into the operation of the Lobbying Code of Conduct and the Lobbyist Register to the Finance and Public Administration References Committee.	<p>The Committee found that ‘the regime established in 2008 is working effectively and provides transparency to this very important aspect of government activity’.^b As well as noting that most submissions supported the Code and Register, the Committee reflected that the department’s evidence ‘pointed to high compliance with the requirements of the Register’ and of the recent changes to streamline administrative process.</p> <p>While the Committee made no recommendations, it did suggest that the Government should consider a protocol to inform the public of breaches of the Code.</p>

Note a: The Senate Standing Committee on Finance and Public Administration, *Knock knock ... who’s there? The Lobbying Code of Conduct*, Commonwealth of Australia, September 2008, p. 17.

Note b: The Senate Finance and Public Administration References Committee, *The Operation of the Lobbying Code of Conduct and the Lobbyist Register*, March 2012.

Source: ANAO analysis.

4.14 These inquiries (and the 2013 internal audit conducted by the department) did not assess the extent to which the implementation of the Code and the Register have met the policy objectives set out in the Code. In the absence of an evaluation, it is unclear whether the current approach to regulating lobbyists is achieving intended policy objectives. Given the Code has been largely unchanged since 2008, a review of the ongoing appropriateness of the arrangements that have been established and the effectiveness of the Code in achieving the stated objectives would be timely.

Recommendation no.1

4.15 The Department of the Prime Minister and Cabinet review the appropriateness of the current arrangements and Code requirements in supporting the achievement of the objectives established for the Code. To better support the ongoing regulation of lobbyists, PM&C should

- (a) implement a strategy to raise lobbyists' and Government representatives' awareness of the Code and their responsibilities;
- (b) assess risks to compliance with the Code and provide advice on the ongoing sufficiency of the current compliance management framework; and
- (c) develop a set of performance measures and establish an evaluation framework to inform stakeholders about the extent to which outcomes and broader policy objectives are being achieved.

Department of the Prime Minister and Cabinet's response: Agreed in part.



Grant Hehir
Auditor-General

Canberra ACT
14 February 2018

Appendices

Appendix 1 The Department of the Prime Minister and Cabinet's response



Australian Government
Department of the Prime Minister and Cabinet

SECRETARY
DR MARTIN PARKINSON AC PSM

Mr Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2600

Dear ~~Mr~~ ^{Grant} Hehir

Thank you for the email dated 21 December 2017 regarding the audit report on the Management of the Australian Government's Register of Lobbyists.

The Department of the Prime Minister and Cabinet (PM&C) welcomes the overarching finding that the arrangements to manage the Register are consistent with the framework agreed by Government. I note that parliamentary inquiries in 2008 and 2012 and the 2013 internal audit reached similar conclusions.

As you are aware, the Lobbying Code of Conduct, as established in 2008 and continued by successive Governments, is an administrative initiative, not a regulatory regime. The Code establishes a publicly available Register of third-party lobbyists and their clients, so that Ministers, their staff and government officials can establish whose interests are being represented by a given lobbyist.

I appreciate the efforts of you and your staff to suggest further enhancements to our administrative approach. As such, I can agree in part to the single recommendation of the audit report, noting the multi-part approach taken. Importantly though, some elements of the recommendation are better suited to a legislatively-based regime that regulates all lobbyists, i.e. not just those employed by third-parties.

As you know, this is not the regime which we administer. That said, PM&C will consider how best to implement the recommendation sub-points consistent with the spirit and intent of the policy objectives of the Register of Lobbyists as an administrative scheme.

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The audit recognises that PM&C's delivery of compliance monitoring is consistent with the level of compliance risks sought by government when establishing the Register. Unlike some other Australian jurisdictions, the Australian Government Register of Lobbyists and the associated Code of Conduct is not enshrined in legislation, therefore it is not compulsory for lobbyists to register and penalties cannot be applied for the failure of unregistered lobbyists to adhere to the Code. The onus for compliance lies with registered lobbyists and with government representatives (including Ministers and Parliamentary Secretaries, ministerial staff, public servants and Defence Force personnel).

PM&C understands the broader conclusions of this audit related to the design and implementation of a regulatory framework. However, PM&C has focussed its response to the multi-part recommendation in so far as it relates to an administrative scheme, rather than a regulatory one, in accordance with the policy objectives of the Australian Government Lobbying Code of Conduct and Register of Lobbyists. For example, often the audit draws comparisons from jurisdictions with legislative schemes, which are not comparable to or consistent with the framework determined by successive Australian governments.

Prior to the audit, PM&C had allocated funds to modernise the IT system which underpins the Register with the view to streamline many of the current processes and improve functionality for lobbyists and other stakeholders. It is anticipated that the new system will reduce processing times, strengthen quality assurance processes, be more flexible and improve reporting while also implementing other improvements consistent with the audit's findings and recommendation. As you know, PM&C agrees with, and is intending to implement, a strategy to raise lobbyists' and Government representatives' awareness of the Code and their responsibilities, following the completion of the IT system redevelopment.

PM&C will also develop a set of performance measures and establish an evaluation framework as part of the redeveloped system, to inform stakeholders about the extent to which outcomes and broader policy objectives are being achieved with respect to the Australian Government's Lobbying Code of Conduct and Register of Lobbyists.

I am committed to continuously improving PM&C's public administration. This report will be used to inform our advice to the Government on options to ensure the Australian Government Lobbying Code of Conduct and Register of Lobbyists continue to facilitate communications with Government commensurate with the goals of transparency with minimal administrative impediments.

Yours sincerely



30 January 2018

