APGRA
Australian Professional Government Relations Association

23 May 2019

The Hon Peter Hall QC
Chief Commissioner
NSW Independent Commission Against Corruption
GPO Box 500 Sydney NSW 2001
By email: lobbying@icac.nsw.gov.au

Dear Chief Commissioner,

Consultation: The regulation of lobbying, access and influence in NSW: A chance to have your say (April 2019)

The Australian Professional Government Relations Association (APGRA) welcomes the opportunity to provide feedback to the NSW Independent Commission Against Corruption (the Commission) regarding the above consultation and the discussion paper, *Enhancing the democratic role of direct lobbying in NSW,* by Dr Yee-Fui Ng and Professor Joo-Cheong Tham (Discussion Paper).

APGRA is a professional association for consulting and 'in-house' government relations practitioners around Australia and agrees with the Commission that 'lobbying' is an important and legitimate part of a vibrant democracy. Our consulting members operate in accordance with the *Lobbying of Government Officials Act 2011* (Act) and associated Lobbying Code of Conduct and generally believe this regulatory framework is fit for purpose.

'Lobbying' and 'lobbyist' are terms that are used with a variety of meanings in everyday discussion, whereas these terms have a quite a specific meaning under the NSW regulatory framework. While the sector itself bears a responsibility for not clearly explaining the activities of professional government relations practitioners to the broader community, it is disappointing that the Discussion Paper uses these terms inconsistently, makes claims that are unsupported by evidence, adopts unstated assumptions and, in places, engages in hyperbole.

This submission will begin by providing the Commission with an overview of APGRA and the practice of professional government relations practitioners, before providing general views on issues raised in the Discussion Paper and then responding to specific questions. We do believe there are some potential areas for improvement to the current regulatory framework and we set these out in our responses.

Thank you again for the opportunity to provide comment in relation to the current consultation. Please do not hesitate to contact the undersigned on 03-9611 1800 or 02-8353 0400, respectively, if further information is required.

Yours sincerely

[signed]

Feyi Akindoyeni
President

[signed]

Les Timar
Secretary

A. About APGRA

APGRA was established in 2014 by a number of longstanding public affairs consulting firms and senior practitioners to promote ethical standards, greater transparency and a binding code of conduct applicable to members conducting government relations activity.

The aims of the APGRA are to:

- Promote high standards of government relations practice in Australia through the establishment and maintenance of a robust industry code of conduct;
- To protect, promote and advance the interests of government relations professionals on all issues affecting or likely to affect the Australian professional government relations industry;
- Complement existing regulation of government relations activity in Australia and provide a basis for regular dialogue between government and the profession; and
- Contribute to greater understanding of professional government relations in Australia, and the legitimate and important role the sector plays in a vibrant democratic system.

The centrepiece of APGRA is a Code of Conduct **(Appendix)** that regulates the behaviour of members and promotes high ethical standards within the government relations profession. The Code operates alongside the NSW lobbying regulatory framework and similar legislation and codes in place around Australia, thereby creating the basis for a co-regulatory framework to maintain and further develop professional conduct.

Membership of the APGRA is open to practitioners across all categories – including consultants, in-house practitioners at corporations and peak industry groups – provided they are able to satisfy and commit to the Code of Conduct and Membership Rules. Failure by members to do so are grounds for declining or cancelling membership, or applying other sanctions deemed appropriate. Further information on the APGRA can be found at www.apgra.com.au.

B. About the industry

Lobbying is a legitimate undertaking in a free and open democratic society. Professional government relations practitioners provide advice and assistance that enhances the effectiveness and free-flow of information between the corporate/industry/not-for-profit sectors and government. This is not only of benefit to non-government parties but, importantly, can expose government to new ideas and opportunities beneficial to the broader community.

Despite the benefits delivered through professional government relations, 'lobbying' frequently attracts a negative connotation, and is seen by some as a method through which 'big business' inappropriately seeks to influence government for narrow commercial benefit. APGRA rejects the substance of this assertion but accepts that the profession's efforts to date have not been effective in explaining and demystifying the practice of government relations. Indeed, APGRA notes the Commission's view from 2010 that "lobbying attracts widespread community perceptions of corruption" but that "in general, professional lobbyists act ethically, and that lobbying, when done well, can enhance rather than detract from good decision-making by public officials."[1]

In APGRA's view, corruption risks are significantly less where a professional government relations practitioner is engaging with a public official than where this is being undertaken by someone who undertakes contact with government on an ad hoc or occasional basis.

[1] NSW Independent Commission Against Corruption, *Investigation into corruption risks involved in lobbying* (November 2010) p 7.

We note that professional government relations practitioners, whether they act for third parties or are in-house, are typically involved in a range of activities that are substantially broader than simply direct advocacy (which is a common understanding of the term 'lobbying'). The basic elements of a government relations practitioner's activities include:

- Understanding the business and priorities of the organisation they are advising as well as the specific objectives they may have in an area of public policy;
- Researching, and advising organisations on, current policy settings in areas of interest to them and potential trends in the development of policy by government (e.g. based on changes in other jurisdictions);
- Assisting the organisation formulate 'the case' they intend to put forward to government in relation to legislation, a government/parliamentary policy inquiry or some other matter – this often involves factoring in existing policy settings as well as casting a critical eye over the organisation's arguments and the justification/evidence they propose to put forward;
- Advising the organisation on relevant government portfolio/agency responsibilities (i.e. who they ought to be engaging with in government) as well as relevant government and parliamentary processes;
- Assisting in the formulation of the organisation's public policy submissions, correspondence etc. to government;
- Monitoring ongoing developments in public policy, parliament and the broader public discourse of relevance to the organisation's activities; and
- Lobbying or advocacy activities that include coordinating logistical arrangements for government stakeholder meetings on the organisation's behalf and, in many cases, attending these meetings and undertaking relevant follow-up.

C. General comments on the Discussion Paper

In its Introduction, the Commission makes the point that "All NSW constituents, community groups and businesses should expect to have fair and equitable access to influence public officials and public authorities…." APGRA agrees. This equality of access is important in a democratic society and we note the significant contribution that new technologies have made over recent years in both broadening the distribution of government information and opportunities for participation.

The Chief Commissioner's Foreword refers to the phenomenon of 'secret lobbying' and the risks that may arise. In considering this, APGRA firstly notes that many legislative and statutory decision-making processes are in fact open to public (and sometimes multi-stage) consultation – for instance, policy discussion papers, exposure draft legislation and land use planning assessment processes. It is also correct to say that there are occasions when a non-government party may seek to introduce an idea, proposal or service to government that is of commercial value to that party vis a vis its competitors. In this scenario, APGRA believes it is legitimate for this is be undertaken on a confidential basis – indeed, it is in the public interest because it encourages the free flow of ideas.

In general terms, APGRA is disappointed with the quality and robustness of the Discussion Paper that has been prepared for the Commission by external parties. It does not make even the pretence of being an even-handed or balanced discussion of 'lobbying', the activities of professional government relations practitioners or the current regulatory framework. Indeed, the tone of the Discussion Paper is alarmist in certain places, key propositions are unsupported by evidence and important terms are used vaguely and without proper context being provided. Our specific concerns are as follows:

Inaccurate representation of the sector

In APGRA's view, the Discussion Paper does not present a balanced discussion of government relations practice or the existing framework through which consulting practitioners are regulated. For example, when discussing possible reform options regarding the Register of Third-party Lobbyists, the paper indicates that this "restrictive coverage fails to provide proper transparency" because it does not include "repeat players (e.g. in-house lobbyists)."[2] It states that "there is no justifiable basis" for the distinction between third-party and in-house lobbyists in this sense.[3] Yet there clearly is a justification for this limited coverage, which was reflected in the introduction of the Lobbying Code of Conduct in 2009 and subsequently confirmed in the Act – namely, that there is a public interest where third parties represent client interests to government for there to be transparency in the identity of that client. In contrast, it is transparent and clear on whose behalf representations are being made where an in-house practitioner engages with a government official (i.e. their employer). APGRA believes this public interest rationale remains sound.

We additionally question the exaggerated tone and inconsistent language used throughout the paper, which fails to present a balanced discussion of lobbying. For example, the authors use terms such as "clandestine activity" and refer to the scenario of government being "oiled by political and financial interests"; we do not believe hyperbolic or pejorative language contributes to a meaningful discussion about how the democratic role of direct lobbying can be enhanced in NSW. Similarly, an inconsistent definition of 'lobbyist' is used throughout the discussion paper. In some places, the authors refer to a lobbyist as any non-government person or party who engages with government; in other places, it appears to refer to those who currently have registration obligations under the existing regulatory framework (i.e. third-party government relations practitioners). For example, the paper states that risks of corruption and misconduct are heightened in "situations when lobbyists or their clients make political contributions to the elected officials or his or her party."[4] Logically, this sentence is to be read to refer to a registered third-party lobbyist, yet in the context of the assertion that is being made it is hard to see what difference exists between a third-party or an in-house lobbyist in the context of corruption and misconduct risks.

On the issue of post-separation employment, the authors reference a statistic that a quarter of former federal ministers have taken on roles with special interests after politics.[5] There is no statement as to what qualifies as a 'special interest', but the implication is clearly a negative one. It then refers to this phenomenon as "a 'revolving door' or 'golden escalator' in politics" with a significant proportion of senior people leaving government "to become well-paid lobbyists".[6] The reader is left in no doubt as to the authors' views of this, although it is unclear on what basis an assessment has been made of how well-remunerated these people are. Equally, there is no attempt at discussion of whether former government representatives moving into the private sector, or vice-versa, may actually provide public benefit in the form of additional capabilities, new perspectives and broader experience.

Information presented in the Discussion Paper also appears to be incomplete. The paper states that "By contrast, in Victoria, both third party and in-house lobbyists are required to register on separate registers."[7] This statement is incomplete, as the additional register is limited to those who are in-house 'government affairs directors' (that is, it does not require registration by other senior in-house executives who have engaged with government representatives) and, of those, only requires registration by those who have previously held a specified position in government or a political party.

[2] Dr Yee-Fui Ng and Professor Joo-Cheong Tham, *Enhancing the democratic role of direct lobbying in NSW* (March 2019) pp 17-18.

[3] Ibid, p 18.

[4] Ibid, p 8.

[5] Ibid, p.31.

[6] Ibid.

[7] Ibid, p.8.

<u>Lack of evidence</u>

In various places in the Discussion Paper, insufficient (or no) evidence has been presented to justify the authors' claims or recommendations. For example, in relation to proposed models for registration, the paper states that "Another (narrower) approach is to restrict coverage to 'repeat players' [i.e. professional lobbyists who receive compensation for carrying out lobbying activities, such as consultant lobbyists and in-house lobbyists]……[this] has key advantages as it targets only significant players."[8] The assumption that appears to underpin this proposal is that the larger integrity risk lies with professional lobbyists as opposed to those who engage government on an ad hoc basis. Where is the evidence to support this proposition? On the contrary, it is reasonable to suggest that those who lack the specialised knowledge, practical experience in government engagement and understanding of applicable ethical standards may present a greater integrity risk.

The authors discuss what they believe to be "financial conflicts of interest that give rise to the risk of corruption and misconduct with direct lobbying."[9] They suggest that this risk is heightened "when government officials have a reasonable prospect of being employed by lobbyists and/or their clients after leaving government."[10] There is no evidence cited of corruption cases that have occurred as a consequence of this particular scenario. The paper goes on to note that "These risks are particularly significant given the high proportion of lobbyists who are former government officials."[11] This suggests that there is something inherently inappropriate or surprising in the situation that many people who operate in the government relations area have previously worked in government, and that corruption and misconduct are widespread issues. Again, no evidence is presented to support this assertion.

While the Discussion Paper quotes extensively from sources (including the authors themselves), in some places these sources often also lack substantiation for claims made. For instance, the paper proposes the introduction of "regulation that targets certain industries" and relies on a Queensland case study produced by the Australia Institute to argue that "businesses in highly regulated areas, such as mining…are more successful in securing meetings with senior government officials, compared to consumer and community groups."[12] The robustness of this conclusion is questionable given the source organisation's open acknowledgment that it is opposed to coal mining; we also note that this work does not rely on NSW data to make its claim.

Directly following on from this, and in support of the idea that lobbying regulation ought to target certain industries, the authors conclude that "access to politicians is skewed towards well-resourced corporate channels, compared to community groups". This claim, unsupported by any evidence of the respective access of corporate and community groups, then references in a footnote the concept of "the Pollution Paradox ('The dirtiest companies must spend the most on politics if they are not to be regulated out of existence, so politics comes to be dominated by the dirtiest companies')", sourced from a recent book published by a UK environmental activist. Its probative value in relation to NSW lobbying regulation is unclear.

D. Responses to specific discussion questions

<u>Measures to improve transparency</u>

1. Are there any examples of lobbying laws/practices in other jurisdictions (interstate or overseas) that seem to work well?

[8] Ibid, p 18.
[9] Ibid, p 9.
[10] Ibid.
[11] Ibid.
[12] Ibid.

APGRA is supportive of the regulatory framework that currently exists in NSW, including legislation, regulations, executive arrangements and parliamentary resolutions. We support these measures as fit for purpose, fulfilling the public policy objectives they are designed to serve – namely, transparency in relation to the representation of third party interests and a set of ethical standards for all those who deal with government.

2. Who should be required to register on the Register of Third-party Lobbyists?

The Register provides transparency over the activities of third party lobbyists who are "carrying on the business (generally for money or other valuable consideration) of lobbying Government officials on behalf of another individual or body".[13] In contrast, the interests of in-house government relations staff – that is, their employer – are apparent.

APGRA is of the view that the current system is effective in fulfilling its purpose as it relates to consulting government relations practitioners; namely, it ensures transparency over whose interests are being represented to government.

However, we consider that there is room for improvement in expanding the registration requirements to include *all* third parties who make representations to government on behalf of clients – this might include lawyers, those from major business services firms, town planners and other consultants (however described). Wherever the situation arises that a person is representing a third party's interest to government, the person should not be permitted to operate outside the regulatory framework simply by reason of the way in which they describe themselves.

3. Should there be a distinction between lobbyists on the register and lobbyists bound by the code of conduct?

APGRA believes this distinction is sound. Third party lobbyist have an obligation to be registered to achieve the particular transparency objective relating to the client's interest being represented. Under current arrangements, the Code "applies to third-party lobbyists and to all other individuals and bodies that lobby NSW Government officials (including individuals engaged to undertake lobbying for a third-party lobbyist)."[14] APGRA believes it is appropriate for the ethical standards under the Code to apply generally to those who deal with government.

4. Should there be a distinction between 'repeat players' and 'ad hoc lobbyists'?

As set out in the response to question 2, above, APGRA does not agree with expansion of the registration system to encompass in-house government relations practitioners (or other senior in-house executives).

In our view, any distinction between 'repeat players' and 'ad hoc lobbyists' is arbitrary and not founded in evidence. The proposition is based on the unstated assumption that ad hoc participants represent less of an integrity risk than those who engage with government on an ongoing basis. In fact, the counter-argument could be reasonably made that ad hoc lobbyists may lack the specialised knowledge, practical training and awareness of operative standards. Additionally, it is unclear how the distinction would be made between repeated and ad hoc participation.

5. Should there be targeted regulation for certain industries? If so, which industries should be targeted?

APGRA does not agree with an expansion of the registration system for the reasons stated above.

If the system were to be expanded, however, we cannot see an evidence-based rationale for a differentiation between industries. This concept is premised on the suggestion that those in certain industries represent more or less of an integrity risk than those in others; we again fail to see what

[13] *Lobbying of Government Officials Act 2011* (NSW) s 3(1).
[14] *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014* (NSW) s 3.

evidence supports this assumption or what information would be used to discriminate between industries. Who would decide which industries are 'in' or 'out'? In the absence of a compelling rationale, we believe such a distinction would be contrary to the rule of law, holding that the law is applied fairly and equally.

6. What information should lobbyists be required to provide when they register?

We believe that the compliance burden ought to be reasonable and proportionate. Currently, those who register are required to provide:

(a) the name and business contact details of the lobbyist,
(b) the names of the individuals engaged to undertake the lobbying of Government officials for the lobbyist,
(c) the names of the persons having a management, financial or other interest in the lobbyist of a kind prescribed by the regulations,
(d) the names of the third parties who have retained the lobbyist to provide, or for whom the lobbyist has provided, lobbying services (whether paid or unpaid),
(e) such other information relating to the lobbyist as the regulations may prescribe or the Electoral Commission considers appropriate.[15]

APGRA believes the above categories of data provide a reasonable level of information. The assertion that "'Repeat players' should be able to bear the administrative burdens of registration given the regularity of their direct lobbying" ignores the reality that many consulting government relations practitioners are sole operators and that some operate only infrequently in NSW.

7. Should lobbyists be required to provide, or at least record, details of each lobbying contact they have, as well as specify the legislation/grant/contract they are seeking to influence? Should this information be provided only to regulatory agencies or be publicly available?

It is unclear in what sense the consultation paper here is referring to when using the term 'lobbyist'; specifically, whether it refers to consulting government relations practitioners (i.e. registered under the current system) or to all who make representations on a professional basis to government.

In any case, APGRA does not support the provision of details for each lobbying contact. The publication of such details may have a negative impact on levels of engagement by the non-government sector with government, for minimal benefit.

8. Should lobbyists be required to disclose how much income they have received and/or how much they have spent on their lobbying activities?

It is again unclear in what sense the consultation paper here is referring to 'lobbyist'; specifically, whether it refers to consulting government relations practitioners (i.e. regulated under the current system) or to all who make representations on a professional basis to government.

In any case, the APGRA does not support this proposition. The Discussion Paper has not provided the compelling rationale/benefit that this proposal would require to be justified, and has not articulated the potential costs associated with commercial confidentiality and competition at the very minimum.

9. How should lobbying interactions with ministerial advisers, public servants, and MPs be disclosed?

Please refer to our response to question 7.

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[15] *Lobbying of Government Officials Act 2011* (NSW) s 10(1).

10. What information should Ministers be required to disclose from their diaries and when?

Under the current framework, all Ministers are required to publish quarterly diary summaries of scheduled meetings with stakeholders such as external organisations, third party lobbyists and individuals. These records include details of the date, the organisation or individual met with, and the purpose of the meeting. APGRA believes the current system is fit for purpose.

11. How can the disclosures of lobbying regulation best be presented and formatted to better enable civil society organisations to evaluate the disclosure of lobbying activities?

Based on our understanding, we believe the current register is easily searchable and does not require modification.

12. Should there be greater integration of lobbying-related data? E.g. should there be integration of (i) information on political donations made by lobbyists; (ii) the register of lobbyists; (iii) ministerial diaries; (iv) details of investigations by ICAC; (v) list of holders of parliamentary access passes; and (vi) details of each lobbying contact (if reform occurred)?

It is again unclear in what sense the Discussion Paper here is referring to when using the term 'lobbyist'. If a narrow definition is intended (i.e. consulting government relations practitioners who are listed on the Register), APGRA believes this would be unfair and discriminatory towards such practitioners.

More broadly, APGRA does not agree that this is a necessary or appropriate role for government.

13. Should the NSW Electoral Commission be required to present an annual analysis of lobbying trends and compliance to Parliament?

APGRA is of the view that the level of information already published is sufficient, including where regulatory compliance issues have emerged. It is also unclear as to the purpose of this analysis, what it might consist of, and what added information it would provide.

Measures to improve integrity

14. What duties should apply to lobbyists in undertaking lobbying activities?

The Lobbyists Code of Conduct includes duties to be observed by all lobbyists in connection with lobbying activities, such as a duty not to engage in misleading, dishonest, corrupt or other unlawful conduct, a duty to provide truthful and accurate information, and a duty to disclose any interest in specific matters discussed during a meeting.[16]

APGRA supports the measures outlined in the Code of Conduct and believes they are fit for purpose, as they clearly set out the ethical standards of conduct to be observed by those undertaking government lobbying, in the interests of transparency, integrity and honesty.

APGRA's own Code of Conduct provides complementary professional standards for member practitioners.

15. Should NSW members of Parliament be allowed to undertake paid lobbying activities?

[16] *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014* (NSW) Part 2.

APGRA agrees that NSW members of parliament should not be permitted to undertake such activities.

16. Should lobbyists be prohibited from giving gifts to government officials?

It is again unclear in what sense the Discussion Paper is referring to when using the term 'lobbyist'.

Regardless, APGRA suggests there should be a single set of rules that govern the provision of gifts or other benefits to a government official either by consulting government relations practitioners or any other non-government party. We do not believe there is a quantifiable need to single out lobbyists under a separate rule. If a single set of rules is indeed developed, a reasonable definition of what constitutes a 'gift' or 'benefit' ought to be applied so that low-value or minor offerings are not included (for example, purchasing a cup of coffee for a government representative should not constitute a prohibited gift or benefit). The current framework and definitions under Part 4 of the Ministerial Code of Conduct (i.e. *Independent Commission Against Corruption Amendment (Ministerial Code of Conduct) Regulation 2014*) appears to embody this approach.

17. Should the definition of 'government official' be expanded to Members of Parliament?

APGRA supports expansion of the regulatory system to include members of parliament.

18. What obligations should apply to government officials in relation to lobbying activities?

APGRA believes that government officials should not accept representations from those representing third parties – however those representatives may describe themselves – unless they are listed on the Register and comply with the Code of Conduct.

19. Should public officials should be obliged to notify the NSW Electoral Commission if there are reasonable grounds for suspecting that a lobbyist has breached the lobbyist legislation?

In APGRA's view, the more significant practical issue is the extent to which people representing third parties are not currently registered. It would be useful to clarify, and if necessary amend, the regulatory framework to ensure that all such third parties are registered (see response to question 2).

APGRA has no concern with public officials reporting possible non-compliance to the Electoral Commission. We have some concern as to how an 'obligation' would operate (e.g. would there be sanctions for failure to do so?), and so would recommend that this be encouraged through government policy and education of officials, rather than a statutory obligation be put in place.

20. Should government officials be required to comply with certain meeting procedures when interacting with lobbyists? If so, what procedures are appropriate?

It is again unclear in what sense the consultation paper is referring to when using the term 'lobbyist'. If a narrow definition is intended (i.e. consulting government relations practitioners who are listed on the Register), APGRA believes this would be unfair and discriminatory towards such practitioners, and without an evidentiary basis.

If a broader definition of lobbyist is intended, this seems to be a solution without a problem. Where is the evidence that the lack of formal rules on meeting procedures is creating a significant problem?

21. Should there be a 'cooling off period' for former Ministers, MPs, parliamentary secretaries, ministerial advisers, and senior public servants from engaging in any

lobbying activity relating to any matter that they have had official dealings with in? If so, what length should this period be?

APGRA supports the 'cooling off period' used at a federal level, whereby persons who have retired from office as a Minister or Parliamentary Secretary are restricted for a period of 18 months from engaging in lobbying activities relating to any matter that they had official dealings with in their last 18 months in office.[17] Similarly, persons who held certain senior government positions[18] are restricted for 12 months from engaging in lobbying activities relating to any matter that they had official dealings with in their last 12 months of employment.[19]

We believe these restrictions are fair and reasonable, and APGRA supports the use of these restrictions at appropriate senior levels. It is important that any restriction of this kind is reasonable and proportionate, bearing in mind that people should not be unduly constrained from securing employment. We think these 18 month/12 month restraint periods represent a reasonable balance, and they also have the virtue of being consistent with the existing federal rules. Logically, these restraints should apply regardless of whether a person works in a consulting or in-house role.

We note these standards are already embodied in the APGRA Code of Conduct under sections 18 and 19 (see Appendix).

22. How should a post-separation employment ban be enforced?

We suggest that a relevant provision could be added to the statutory declaration required before an individual can be included on the Register, and submitted annually.

23. Should lobbyists covered by the NSW Register of Lobbyists be required to disclose whether they are a former Minister, ministerial adviser, MP, or senior government official and, if so, when they left their public office?

APGRA has no concern with this proposal, but suggests this is limited to service in the NSW Government or Parliament.

24. Should lobbyists covered by the NSW Register of Lobbyists who are former government officials be required to disclose their income from lobbying if it exceeds a certain threshold? If so, what should be the threshold? And for how long should this obligation apply after the lobbyist has left government employment?

APGRA's general views on income disclosure are set out above in response to question 8 – we oppose it. It is unclear from the Discussion Paper what the rationale of this proposal is in relation to former government officials.

<u>Measures to improve freedom</u>

31. Should there be provision for exemption from restrictions on direct lobbying such as the ban on post-separation employment when undue hardship can be demonstrated?

Given APGRA's position set out in response to question 21, we do not believe the rationale for any exemption arises.

32. Could existing or new regulatory requirements drive improper lobbying practices underground or have a dampening effect on legitimate lobbying?

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[17] Department of the Prime Minister and Cabinet, Australian Government, *Lobbying Code of Conduct* (2013) s7.1.
[18] Including persons 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).
[19] Department of the Prime Minister and Cabinet, Australian Government, *Lobbying Code of Conduct* (2013) s7.2.

APGRA believes that the various far-reaching proposals put forward in the Discussion Paper gives rise to significant risk of both a chilling effect on legitimate government engagement and improper lobbying activity.

A major consideration that is not at all raised in the Discussion Paper is the legitimate (and common) situation where a non-government party seeks to raise an issue with government to which some level of commercial sensitivity or confidentiality attaches. It is naïve to think that a scenario of 'radical transparency' would not alter the level and quality of this engagement or, potentially, undermine compliance with lobbying rules by unscrupulous parties.

Measures to improve compliance and enforcement

33. Is there adequate support for lobbyists and government officials to enable them to understand their obligations under the lobbying legislation?

APGRA agrees that there appears to be an information gap on the part of some in government regarding lobbying activities and the existing regulatory system.

Of particular concern is the practice or informal 'policy' evident among some ministerial offices to constrain contact with registered third party lobbyists solely for the reason that those people are so registered. This is a perverse outcome given that those impacted are in fact the only people subject to regulation; it seems to be a product of a lack of understanding of the role of lobbying, the relevant legislation and Code of Conduct.

APGRA stands ready to play a role with government officials in explaining the role of lobbying and government relations practitioners.

34. To understand their obligations in relation to lobbying, should there be training and/or education programmes for (i) lobbyists; (ii) public servants; (iii) Ministers; and ministerial advisers? If so, what sort of training or education programme is needed?

We strongly support greater education to assist stakeholders in understanding their obligations under the current lobbying framework. As noted above, APGRA believes it can play a role in informing government officials on the role of lobbying.

37. Are the sanctions under the lobbyist legislation adequate (i.e. suspension of lobbyists, placing on Watch List, or deregistration)?

APGRA believes the current graduated system of sanctions ought to also include a 'warning' as the lowest level sanction for minor and/or unintentional breaches of the Code of Conduct. This would improve the proportionality/flexibility of sanctions and serve to formally alert lobbyists to non-compliance before it escalates.

Ends/……

Appendix

Code of Conduct

Introduction

The individual and firm members of the Association believe that government relations practitioners must be honest, open and transparent at all times in their dealings with government and clients, and are committed to high standards of integrity in the conduct of their businesses and activities.

This Code of Conduct has been developed by the Association to clearly articulate the professional and ethical framework for the way in which members relate to government in Australia. Members' primary obligations are to abide by the relevant legislation and government codes in place around Australia. It is intended that this Code will operate alongside those schemes, but in any and all cases of inconsistency, relevant legislation and government codes will prevail to the extent of that inconsistency.

Membership of the Association is open to any firm or person for whom the making of representations to government in Australia constitutes part of their professional activities, and who is prepared to abide by and implement this Code of Conduct and Membership Rules, and continues to comply with them on an ongoing basis.

This Code of Conduct covers the activities of members in their interaction with Australian governments at all levels. Members can include specialist government relations firms and their staff, professional communications firms that also offer government relations support as part of their services, 'in-house' and individual government relations practitioners as well as any other professionals who make representations to government.

It is a pre-requisite and condition of membership of the Association that members adopt and abide by this Code of Conduct, and that all practitioners involved in providing government relations services and making representations to government observe the duties and principles set out in the Code. Members will be required to renew their commitment to the Code each year as a condition of membership.

Failure to adopt and abide by this Code of Conduct and Membership Rules will be grounds for declining or cancelling membership of the Association, or other sanctions deemed appropriate and proportionate.

Definitions

"***Consulting Practitioner***" means a Government Relations Practitioner who is engaged as a third party to Make Representations on behalf of an individual, a company or an organisation.

"***Client***" means an individual, association, organisation or business who:

a) has engaged the Practitioner, or the organisation for whom the Practitioner works, on a professional basis to Make Representations to an Government Representative; or
b) in relation to an 'in-house' Practitioner, means the Practitioner's employer.

"***Executive Role***" is any leadership, office-bearer, fundraising or decision making role in a registered political party or associated entity but does not include ordinary membership of a political party.

"***Government Institutions***" includes Parliament, local government, the ministry, the bureaucracy, and government owned trading organisations.

"***Government Relations Practitioner***" or "***Practitioner***" is an individual who may be a person, body corporate, unincorporated association, or partnership who Makes Representations.

"***Government Representative***" means a Government Institution or a person elected to be a member of a Government Institution such as a Member of Parliament or local councillor as well as their staff, such as Ministerial staff, staff employed by a Member of Parliament, staff employed by a local or shire council, or staff employed in the public sector.

"***Lobbying Rules***" means rules established by legislation or a Government Institution to regulate lobbying or government relations practitioners or their activities. For an up to date list, see the Association's website.

"***Making Representations***" includes substantive contact with a Government Representative for the purpose of influencing government decision-making including making or changing legislation, developing or amending policy or programs, the awarding of a tender, a grant or allocation of funding, and meeting or other requests, but does not include non-substantive matters such as requests for publicly available information or modifying logistical arrangements for a meeting.

"***Management Committee***" means the Management Committee of the Association or their designate.

Operation of this Code

1. This Code applies in respect of all circumstances in which a Government Relations Practitioner is Making Representations on behalf of a Client.

2. Any breach of this Code of Conduct will be dealt with in accordance with the Membership Rules and it is an obligation of membership that each member (and their relevant staff) is bound by those Rules.

3. This Code commences on 1 July 2014.

Professionalism

4. Practitioners will act with honesty and decency at all times towards Government Representatives.

5. Practitioners will not act in a manner detrimental to the reputation of the Association or the professional practice of government relations in general.

6. Practitioners will not engage in any conduct that is corrupt, dishonest or illegal.

7. Practitioners will use reasonable endeavours to satisfy themselves of the truth or accuracy of all statements made or information provided to Government Representatives and will exercise proper care to avoid giving false or misleading information.

8. Practitioners will diligently advance and advocate their Client's interest.

9. Practitioners will devote time, attention, and resources to the Client's interests that are commensurate with Client expectations, agreements, and compensation.

Interactions with Government

10. When interacting with Government Representatives, Practitioners will disclose on whose behalf they are acting, and will not misrepresent their interests.

11. Where the proposed or actual activities of a Client may be illegal, unethical or otherwise contrary to a Lobbying Rule or this Code, Practitioners will advise the Client accordingly and refuse to act in relation to the relevant activity.

12. Practitioners will not make misleading, exaggerated or extravagant claims regarding, or misrepresent, the nature or extent of their access to, or relationship with, Government Representatives, political parties, or members of political parties. This clause extends to claims of 'guaranteed' access to, or outcomes from, particular Government Representatives.

13. Practitioners will not offer or give, or cause a Client to offer or give, any financial or other incentive to any Government Representative that could be construed as a bribe or inducement.

Personal Political Activity

14. Practitioners will keep strictly separate their professional activities and any personal activity or involvement on behalf, or as a member, of a political party.

15. Practitioners will not serve in an Executive Role with a political party.

16. Practitioners will not play a senior management role in the conduct of an election campaign.

Employment of Government Representatives

17. Practitioners will not employ, or otherwise commercially engage, any current Government Representative.

18. Practitioners who were formerly elected Government Representatives will not, for a period of 18 months after they ceased to hold office, Make Representations on behalf of a client, with respect to any matter on which they had official dealings in the 18 months prior to leaving that role.

19. Practitioners, who were formerly non-elected Government Representatives will not, for a period of 12 months after they ceased their former role, Make Representations on behalf

of a Client, with respect to any matter on which they had official dealings in the 12 months prior to leaving that role.

Compliance with Laws, Regulations and Rules

20. Practitioners will comply with any relevant Lobbying Rules and with this Code. Where any conflict exists between this Code and a Lobbying Rule, Practitioners must abide by the Lobbying Rule.

21. Practitioners will comply with any legislation, government resolution or rule relating to donations to political parties and any other matter.

22. Practitioners will conduct themselves in accordance with the rules of parliament or any other Institution of Government while within their precincts (including rules relating to any access pass that might have been issued to them).

23. Practitioners will abide by the rules for obtaining, distribution and release of parliamentary and governmental documents.

24. Practitioners will not obtain information from Government Representatives by improper or unlawful means.

25. Practitioners will not cause a Government Representative to breach any law, regulation or rule applicable to them.

Obligations Only Applying to Consulting Practitioners

26. Consulting Practitioners will have a written agreement with their Client regarding the terms and conditions for their services, including the amount of and basis for compensation.

27. The fees charged by a Consulting Practitioner will be reasonable, taking into account the facts and circumstances of the engagement.

28. Upon termination of their relationship, Consulting Practitioners will take steps to the extent reasonably practicable to protect a Client's interests, such as giving reasonable notice to the Client, allowing time for employment of another Practitioner, and surrendering papers and property to which the Client is entitled.

29. Consulting Practitioners will indicate to their Clients their membership of the Association, and the existence of obligations under this Code and the Lobbying Rules.

30. Consulting Practitioners will avoid conflicts of interest in Making Representations on behalf of a Client to a Government Representative.

31. Consulting Practitioners will disclose any known conflict of interest to their relevant Clients and resolve the conflict issue promptly.