

Senate Finance and Public Administration Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

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### **Review of the operation of the Lobbying Code of Conduct and the Lobbyist Register**

The Government Relations Professionals Association Incorporated (GRPA) is pleased to respond to the Senate Finance and Public Administration Committee request for submissions to its inquiry into the operation of the *Lobbying Code of Conduct and Lobbyist Register*.

With members in Queensland, New South Wales and Victoria – and active in all Australian jurisdictions - the GRPA was established to represent experienced, professional government relations practitioners who have an interest in fair, open and accountable access to government on behalf of their clients and employers. Since 2009, the GRPA has been an active participant and advocate on issues of transparency and governance in relation to matters of integrity and it participated in the Commonwealth Government's lobbying roundtable process in 2010.

This submission has been developed in reference to the 2010 New South Wales Independent Commission Against Corruption (ICAC) *Investigation Into Corruption Ricks Involved in Lobbying*, and the Queensland State Government's *Review of the Integrity Act 2009* undertaken late 2011.

To assist the Senate inquiry, and in addition to this submission, the GRPA has attached its submissions provided in response to the Queensland Integrity Commissioner's review of the *Integrity Act 2009* (which was based on the 2010 NSW ICAC inquiry report), and the recent Queensland Government review. Both these submissions respond to a series of specific questions/issues and will help to provide context to the GRPA's position on a number of topics.

#### **Overview**

The GRPA is on the record as supporting the establishment of the Commonwealth Government's Lobbying Code of Conduct and Lobbyist Register.

The GRPA has consistently argued that, if maintaining a register and regulating and monitoring the behaviour and business practices of third party lobbyists improves the integrity, accountability and transparency of government, then the same principles should extend to all individuals or organisations that approach Ministers, Parliamentary Secretaries, Ministerial staff members or public servants on behalf of themselves, their employer, a third party or their membership/constituency seeking to inform a decision-making process.

Lobbying is commonly defined as "contact or communications with a government representative in an effort to inform and/or influence government decision making".

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It is the GRPA's contention that it is the acts of "contact" and "an effort to inform and/or influence" that should determine who is a lobbyist.

The GRPA notes and supports the ICAC Report executive summary which states: "The primary aim of any lobbying regulatory system must be to improve transparency and address other corruption risks in a manner that is practical and not unnecessarily onerous, and one that does not unduly interfere with legitimate access to government decision-makers".

## **Commonwealth Government's Lobbying Code of Conduct**

### **Comments**

#### **1. Preamble**

The GRPA generally supports the views expressed in the Preamble and believes the points should serve as guiding principles for the remainder of the Code.

We believe that the explanation of lobbying in 1.2 and 1.3 of the Code applies to the more common understanding or usage of the term, but is inconsistent with the definition of Lobbyist outlined within the Code.

We believe it is necessary to explicitly acknowledge in the Preamble that the Code only refers to registered lobbyists.

Our recommendation in this regard would be to preface the word "Lobbying" with "As defined in the Code" and Lobbyists with "Registered" to distinguish between those lobbyists to which the Code applies, and unregistered lobbyists. Most who read the Code are likely to default to the commonly-held understanding of the term lobbying, unless they are explicitly and regularly reminded that it only applies to lobbying and lobbyists as defined by the Code.

Further, clause 1.4 reinforces the need to promote trust in accordance with public expectations of transparency, integrity and honesty but does so without acknowledging that this only applies to lobbying as defined in the Code.

#### **2. Application**

The GRPA has concerns about the second dot point in the Application clause.

The practical effect of its interpretation or misinterpretation by government representatives is to use this peculiar "no obligation" exemption to avoid talking to a registered lobbyist - thereby denying a lobbyist's client appropriate access to government processes. As individual and corporate citizens, registered lobbyists and their clients should be entitled to the same rights and level of access to government as all other citizens.

While it may not legally apply directly, the following extract from the Commonwealth *Anti-Discrimination Act 1991* contains a relevant principle here:

The Parliament considers that:

- (a) everyone should be equal before and under the law and have the right to equal protection and equal benefit of the law without discrimination; and
- (b) the protection of fragile freedoms is best effected by legislation that reflects the aspirations and needs of contemporary society; and
- (c) the quality of democratic life is improved by an educated community appreciative and respectful of the dignity and worth of everyone.

#### **3. Definitions**

##### **3.1 Lobbying activities**

The GRPA argues that "contact" in "an effort to influence Government decision-making" should be the determining factors with respect to lobbying.

While noting that the Code includes a range of activities not considered lobbying, the GRPA believes that this list should be expanded to include:

- A request for information which does not involve an effort to influence Federal Government decision-making
- Organising a meeting with a government representative
- Market research and/or surveys
- Community and stakeholder engagement activities
- Event management and logistics.

These activities are clearly not lobbying and should be specifically exempted within the Code.

### **3.2 Lobbyist**

The GRPA contends that if government is seeking transparency and integrity in lobbying activities, it should encourage the broadest registration of lobbyists who are governed by effective codes of conduct.

The GRPA has long argued that the term “lobbyist” is pejorative. It was cited in evidence to the ICAC inquiry in 2010 as one of the reasons lawyers and other professional service providers resist being identified as such.

If a simple name change would minimise a barrier to successfully broadening the definition of a “lobbyist”, then it should be enacted. The GRPA would welcome a less emotive term and would support a “Register of Government Relations Advisers” or the like. The Western Australian government proposes a “Register of Advocates to Government” which is a considerable improvement on the current “Register of Lobbyists”.

### **3.3 Extension to all lobbyists**

The GRPA has consistently registered its concern that some (but not all) lobbyists are required to register, with those registered only representing a minor proportion of real lobbying activity.

There does not appear to be any real attempt to regulate the vast majority of the lobbying of Government that occurs, including lobbying done by those who are full-time employees of an entity. This situation provides exemptions for organisations and individuals which represent third parties. The vast majority of professionals (eg lawyers, town planners, accountants, business consultants) who will claim the incidental lobbying exemption are mostly representing third parties. Other lobbyists represent professional organisations, trade unions and not-for profit organisations. All are exempt.

The GRPA contends that if government is seeking transparency and integrity in lobbying activities, it should encourage registered lobbyists who are governed by effective codes of conduct – rather than imposing layers of bureaucracy and administrative requirements on a small section of the lobbying community.

The GRPA contends that both the employment status of an individual and their employer’s industry sector are irrelevant to determining whether or not lobbying, as defined, has occurred. Similarly, whether the “effort to influence” is for a profit-making or not-for-profit entity is irrelevant. It is the act of lobbying that is relevant.

The successful influencing of a government policy or decision by a not-for-profit organisation could have just as significant ramifications as the successful lobbying by a for-profit organisation or a third-party lobbyist. The GRPA maintains that legislating for a distinction between entities and individuals is discriminatory and fails the tests of robustness and transparency.

Such a burden imposed on only registered, third-party lobbyists and their clients will make it attractive and more convenient for a business to utilise the services of someone who is not a registered lobbyist, provides no transparency, nor has a code of conduct to guide their activities.

The rules should apply to all who, by reasonable definition, undertake lobbying.

With respect to possible logistical difficulties, one solution might be to register a firm rather than the individuals – such registration would require all individuals within a firm to adhere to the Code of Conduct.

The GRPA supports the ICAC Report's definition of a Third Party Lobbyist as: "A person, body corporate, unincorporated association, partnership, trust or firm who or which is engaged to undertake a Lobbying Activity for a third party client in return for payment or the promise of payment for that lobbying".

#### **4. No Contact Between Government Representatives and Unregistered Lobbyists**

While the GRPA agrees with the intent, this section in the Code provides uncertainty in application if it cannot be applied and extended to all individuals and entities which lobby.

A person or entity undertaking lobbying activity as defined by the Code is either properly registered, as required, or is not. If not, then there should be no contact allowed by a government representative.

In effect, this clause places the onus of intent on government representatives. It could well be argued that, despite being in breach of the Code, an unregistered entity may still be able to conduct a lobbying activity if the government representative is unaware of whether the entity is registered or not.

Once again, it is the act of seeking to influence that should be the determining factor.

#### **5. Register of Lobbyists**

If maintaining a register and regulating and monitoring the behaviour and business practices of third party lobbyists improves the integrity, accountability and transparency of Government, then the same principles should extend to all individuals or organisations that approach Ministers, Parliamentary Secretaries, Ministerial staff members, public servants or councillors on behalf of themselves, their employer, a third party or their membership/constituency.

The GRPA acknowledges the requirement for former senior government representatives to identify themselves on the Register of Lobbyists, including the date of their cessation with government.

However, the GRPA contends that it is excessive and superfluous to require someone who has not been a senior government representative for more than a decade, for example, to maintain that written declaration on the Register.

The GRPA would support an amendment to Code that requires such mandatory disclosure on the Register of Lobbyists to be for the period of an individual's ban/restriction from representing clients or interests for which they had official dealings while in government, and thereafter voluntary disclosure.

#### **6. Access to the register of Lobbyists**

The GRPA supports the need for openness and transparency for the Register of Lobbyists.

## **7. Prohibition on Lobbying Activities**

The GRPA supports the view that it is the issue of transparency which is the most important. Honest and transparent dealings with government should be encouraged at all times. Please refer to our comments regarding the register of lobbyists and senior government representatives.

## **8. Other matters**

The GRPA has no comment on clauses 8, 9 and 10 of the Code other than re-emphasising that the Code is limited to only those individuals and entities defined as lobbyists and who are registered.

## **9. Harmonisation**

The GRPA strongly supports the proposition that some uniformity of registers across jurisdictions must be achieved. This may be possible via a mutual recognition standard.

The motivation from industry to achieve harmonisation is to minimise the administrative burden imposed by multiple systems, including the different timelines and processes for maintaining registration. If red tape minimisation is the goal, we believe a reasonable solution must be available.

## **10. Summary**

The GRPA requests the Committee to consider the views and experiences of GRPA members (which includes registered lobbyists in Queensland, Victoria and New South Wales, as well as in-house government relations professionals).

The GRPA is available to the Committee for further discussion on any matter.

Yours sincerely

**BARTON GREEN  
PRESIDENT**