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27 January 2012

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

ATTN: The Secretary, Ms Christine McDonald

Dear Sir/Madam,

Submission to the Senate Finance and Public Administration Committee inquiry into the operation of the Lobbying Code of Conduct and the Lobbyist Register

On behalf of Government Relations Australia (GRA), I appreciate the opportunity to provide a submission in relation to the Committee's inquiry into the operation of the Lobbying Code of Conduct (Code) and the Lobbyist Register (Register).

In this submission, GRA has set out its views on the overall effectiveness of the Code as well as some of the key issues identified by the Committee in its 2008 inquiry.

1. Who Are We

By way of background, GRA is a bipartisan strategic advisory firm specialising in public policy and government affairs across Australia at both federal and state/territory government levels. Established in 1994, we provide advice and assistance to Australian and international companies, industry associations and not-for-profit organisations across a broad range of industry sectors. GRA draws together a senior professional team with a variety of experience in the areas of public policy, business, defence and elsewhere via a network of offices in Sydney, Melbourne, Brisbane, Canberra, Adelaide and Perth (GRA Everingham).

GRA highly values its good reputation and operates in an open and honest manner in advising and representing its clients. In 1999 GRA's Board of Directors endorsed a Code of Practice to govern the firm's activities (attached), which has long been published on our website and as part of the firm's marketing material. It is an expression of the firm's commitment to ethical conduct and the standards it expects of its staff.

GRA supported the introduction of the Code and Register in 2008 and continues to do so. The firm is registered under the Lobbyist Registers and associated Codes of Conduct established by the Australian, West Australian, Tasmanian, NSW, Queensland, South Australian and Victorian Governments.

2. Effectiveness of the Code

In GRA's view, the efficacy of the Code ought to be assessed against the public policy objectives it was established to achieve. Fundamentally, there are two aims underpinning the provisions of the Code: maximising compliance with basic ethical standards for those making representations to government; and, secondly, transparency in relation to the identity of a client on whose behalf a consultant makes representations to a government official.

We believe the last three years indicate that the Code and associated Register have been highly effective in achieving their objectives. In our experience, the obligations of the Code are taken seriously by both government relations practitioners and government personnel in terms of ethical standards as well as the high level of compliance with disclosure obligations.

While the Code only applies to professional government relations practitioners (and certain others in limited circumstances - see further below) who are engaged by third party clients to assist in their representations to government, this is a sound approach given that one of its central objectives is to ensure that government representatives clearly understand on whose behalf representations are being made.

It is GRA's submission that the current Code, together with some relatively minor changes or points of clarification, represents the appropriate and balanced regulatory approach to lobbying. From our firm's experience over the last three years, the compliance burden associated with the Register (and its counterparts in other jurisdictions) is significant but manageable, and the management of the Register by the Department of Prime Minister and Cabinet is undertaken efficiently and effectively.

3. Coverage of lobbyists

The current regulatory arrangements do not apply to in-house government relations practitioners, either in corporations or industry/interest groups, even though individuals in these categories represent a majority of those seeking to influence the policy-making process. This was a matter examined by the Committee in 2008. While GRA believes there is probably no intrinsic benefit in formally registering these practitioners, we think one area of improvement would be to modify the Code such that all parties seeking to interact with government clearly understand that its basic ethical standards also apply to them. This could be made clear in the Code as well as on the websites of each government agency. In addition, given that it is generally understood that government officials have no obligation to deal with any particular external party, an official would be well within their rights not to deal with any person who behaved unethically, whether they are registered or not.

The treatment of other third party professional service providers – such as lawyers, those working at accounting/business services firms, and a wide range of other consultants (eg. management, environmental and planning consultants) – is already envisaged under the Code. Under clause 3.5, a 'lobbyist' is defined to not include a service provider who makes "occasional" representations to government on behalf of others in a way that is "incidental" to the provision of the professional service. Presumably, then, other professional service providers who are seeking to influence government decision-making on more than an occasional basis ought to be registered, yet this is not clear from the list of parties registered under the Code.

The Queensland Integrity Commissioner has recently expressed a concern in relation to a similar provision under his State's code and legislation which refers to "incidental lobbying", the practical effect of which is that no or very few such practitioners are registered. Yet it is clearly the case that some lawyers, business service firm personnel, consultants etc are engaged in furthering their client's interests by seeking to influence government decision making.

GRA agrees with this concern and believes that the definition of 'lobbyist' ought to be changed so that there is an obligation to register wherever a service provider engages with a government representative on a client's behalf with the objective of seeking to influence government decision-making.

4. Procedural fairness

Item 10 of the current Code (dealing with registration/deregistration) provides for deregistration as the key sanction available to the Cabinet Secretary. While, arguably, there is nothing in the Code stopping the imposition of an alternative sanction, GRA believes there would be merit in making clear that graduated sanctions are also possible. Deregistration may, of course, be appropriate for serious misconduct, yet equally there will be other instances of inadvertent or unintended non-compliance where a warning or other measure (such as 'probation') would be the proportionate response, particularly where the firm or individual has a solid track record of compliance.

GRA has a level of concern in relation to the absolute discretion vested in the Special Minister of State for the Public Service to direct the Secretary of the Department of Prime Minister and Cabinet to not register or to deregister a particular lobbyist or person. As is apparent from the Committee's 2008 report, there would be very limited avenues for appeal for an affected party if this clause were invoked other than potentially the Federal Court or High Court. We believe the Committee should consider a potential role for the Ombudsman or Administrative Appeals Tribunals to review relevant decisions on both the merits and at law.

5. Post-employment prohibitions

GRA agrees that there is a public interest in government officials not being able to leave public service and immediately represent private interests on those issues they were involved with in government. There is clearly a balance that is required between this interest and the legitimate interest of government personnel in maintaining their career prospects outside of government if that is their choice.

We contend that the Commonwealth has achieved an appropriate balance in the Code which imposes restraints firstly as to duration (cooling off periods of differing lengths on various categories of government official based on seniority and therefore proximity to decision making) and secondly as to subject matter (no lobbying on issues with which they had an official involvement during their immediately preceding period of government service). In GRA's view, any expansion of these prohibitions would unreasonably restrict the employment prospects of government personnel, particularly those with limited employment security (eg those who employment is subject to election outcomes, ministerial reshuffles etc).

In order to represent coherent public policy, these standards should also apply in a range of other contexts in which government staff seek to pursue opportunities in the non-government sector – such as legal services, other consultancy roles and senior corporate management roles. GRA submits that the Code is currently unclear in relation to the application of the post-employment prohibitions to organisations beyond those registered under the Code. By way of example, it does

not seem appropriate to distinguish between a former government representative taking on a role with a professional government relations firm vis a vis an in-house role with a corporation. GRA submits that the Committee should recommend this anomaly be addressed.

Please do not hesitate to contact the undersigned if any further information or views would be useful. If it would be helpful to the Committee's deliberations, we would be happy to provide evidence to the Committee.

Yours sincerely

LES TIMAR
Managing Director

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