GRPA
GOVERNMENT RELATIONS
PROFESSIONALS ASSOCIATION

Dr David Solomon
Queensland Integrity Commissioner
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11 March 2011

Dear Dr Solomon

Review of the Integrity Act 2009

In response to your invitation, the Government Relations Professionals Association Incorporated (GRPA) makes this submission regarding your review of the operation of the lobbying provisions of the *Integrity Act 2009* (chapter 4 of the Act).

In preparing its submission, the GRPA has reviewed the November 2010 report from the New South Wales Independent Commission Against Corruption (ICAC), *Investigation Into Corruption Risks Involved In Lobbying*, the *Integrity Act 2009* and the Queensland *Lobbyists' Code of Conduct*.

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".

The GRPA requests that you take into full account the views and experiences of the GRPA and its members (which includes registered lobbyists in Queensland and New South Wales, as well as in-house government relations professionals) in forming any recommendations to the government.

Comment on the ICAC Report, *Investigation Into Corruption Risks Involved In Lobbying*

1 Lobbying Entity and Third Party Lobbyist

The ICAC report recommends the creation of a second (new) category of lobbyist, the Lobbying Entity: "A body corporate, unincorporated association, partnership, trust, firm or religious or charitable organisation that engages in a Lobbying Activity on its own behalf".

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The GRPA supports the ICAC recommendation to capture Lobbying Entities (as defined in the ICAC Report) and recommends amendments to the *Integrity Act 2009* to include those entities who lobby government representatives on their own behalf, including on behalf of their members, and any individuals (employees) who lobby on behalf of their employer. This amendment would repair a current anomaly and require government relations advisors who work in-house for a corporation or organisation to be captured by the Lobbyists Code of Conduct and to register on the Lobbyist Register.

While the GRPA supports this ICAC recommendation, as set out in the submission below, it would encourage the operation of, and rules for, the Lobbying Entity category to replicate that for third party lobbyists with respect to identifying individual lobbyists and their inclusion on a single lobbyists register.

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". The GRPA welcomes the ICAC position - and encourages the Integrity Commissioner to recommend - that the definition of "lobbyist" does not include exemptions for professionals, such as lawyers and accountants.

The GRPA is firm in its view that all parties and individuals who engage in lobbying activity should be required to comply with the Act and the Code of Conduct. This ICAC recommendation, if adopted, would remove the current anomalous exceptions that occur in Queensland.

1.1 GRPA Membership Criteria

As a matter of comparison for the Commissioner, the GRPA has two categories of membership – one for individuals and one for Registered Consultancy Groups. To assist the understanding of the arguments set out below, it will be of benefit to present the membership definitions and requirements. The GRPA Constitution states, at section 5:

(1) The membership of the association consists of ordinary members and Registered Consultancies.

(a) Ordinary member

An ordinary member shall be any person who is a sole operator, or a Director, officer or an employee of an organisation*, whose duties include representing the interests of their employer or a third party to a Government Representative;

(b) Registered consultancy

A registered consultancy shall be an organisation*:

(i) ***That conducts, as a principal activity, government relations advisory services on behalf of third-party clients; and***

(ii) ***Whose Directors, officers, staff and/or external consultants are financial members of the association; and***

(iii) ***That acknowledges, enforces and promotes the association's Code of Conduct to its Directors, officers, staff and external consultants; and***

(iv) ***That advises its clients of the association's Code of Conduct and of its requirement that all Directors, officers, staff and external consultants adhere to the Code.***

****Note: An organisation shall include, but not be limited to, any body corporate, unincorporated association, partnership or firm.***

The GRPA draws the Commissioner's attention to its definition of an "organisation", and to the membership requirements for a Registered Consultancy Group (RCG). Specifically, a RCG conducts government relations advisory services as a "principal activity", not necessarily a sole activity, on behalf of third party clients. This enables GRPA members such as Three Plus, Rowland and The Phillips Group to be RCG members, despite those companies providing a wide range of communications consulting services to third parties, including public relations, media management, event management, finance and investor relations, and community and stakeholder engagement services. Government relations is a principal activity for these companies, not a sole activity. Their staff who undertake government relations consulting are registered lobbyists in Queensland – identified individually on the Register of Lobbyists under their relevant employers. This distinction/definition is important with respect to the argument presented below regarding the inclusion of other professional services firms such as lawyers, accountants, town planners and business advisors (and their relevant employees/partners) as lobbyists.

While it is neither the GRPA's position, nor that of its RCG members, an argument could be made that the current definition of, and exemption from registration for, "incidental lobbying activities" could apply to public relations and communications consultancies which undertake government relations consulting (lobbying) only as a small part of their overall professional services offering.

1.2 The Act of Lobbying

The ICAC recommendation for a broad definition of Third Party Lobbyist and for creating a Lobbying Entity category will enhance integrity and accountability in public administration. As the GRPA has previously argued, 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.

Lobbying is defined in the *Integrity Act 2009* as: "...contact with a government representative in an effort to influence State or local government decision-making...".

It should be the acts of "contact" and "an effort to influence" that are the determining factors with respect to lobbying. Neither the employment status of an individual nor their employer's industry sector should be a consideration. 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.

It is the GRPA's contention that the *Integrity Act 2009* does not currently seek to regulate the vast majority of the lobbying of government representatives that occurs in Queensland. It does not seek to regulate any lobbying done by lobbyists who are full-time employees of an entity, regardless of whether or not they spend the majority of their time engaged in lobbying activity. It provides exemptions for representative organisations which, by their very nature, lobby. 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 are employed by professional organisations, trade unions and not-for-profit organisations. All are specifically exempt from the Act.

1.3 Inconsistencies

1.3.1 In-house versus Third Party

Under the *Integrity Act 2009*, a full-time government relations manager for an information technology company, for example, is freely able to carry out lobbying activity for their employer, without public disclosure. However, if the individual represented the information technology company as a third-party government relations advisor, then the individual (and their employer) and the client must be listed on the Register of Lobbyists. In these two examples, the same individual, representing the same company, can have the same "contact" with the same "government representative" on the same topic in an "effort to influence" the same "State government decision-making". Yet only the third-party consultant is required to be a registered lobbyist and to nominate their client on the Register. The employee is free to conduct his or her contact with government without the need for any disclosure.

1.3.2 Company Directors

There is a need to clarify the situation with respect to Company Directors.

Non-Executive Directors are not exempted by the full-time employee exemption (which the GRPA argues should be removed), but it seems widely accepted in practice that they do not need to register. Most Directors would regard advocacy on behalf of their company as part of their responsibilities, and many professional Directors have regular access to the highest levels of Government. Many Directors are on more than one Board and so may make representations on behalf of more than one entity.

Additionally, a former senior government representative may take up Executive or Non-Executive Directorships immediately upon leaving Government, and then lobby on behalf of their companies without being on the Lobbyists Register. They are also not subject to the ban from undertaking related lobbying activity.

This should be rectified. The ICAC definition for a Lobbying Entity would seem to address the matters raised in 1.3.1 and 1.3.2 above.

1.3.3 Professional Services Firms

The GRPA has submitted previously that, as an example, lawyers and town planners (and engineers and accountants) can and do legitimately lobby on behalf of their clients to government. In many instances, a government relations consultant is sitting with a lawyer and town planner in the same meeting with a government representative, all in "an effort to influence State or local government decision-making" on behalf of a client. However, the government relations consultant is a "lobbyist" and must be registered as well as listing their client, yet the lawyer and town planner are either "incidentally lobbying" or providing "technical or professional services" and are not defined as lobbyists. If the government relations advisor was an employee of the client, then no registration or public disclosure is required. The GRPA contends that these inconsistencies in the application of the *Integrity Act 2009* are discriminatory – and defeat the intent of the Act, Register and Code.

For many such professional services firms, as in the case of the communications consultancies' example above, government relations is not a sole activity, but it is a principal activity. It is the view of the GRPA that such activity does not constitute "incidental lobbying activities" and therefore no exemptions should apply. As stated above, it should be the acts of "contact" and "an effort to influence" that are the determining factors with respect to lobbying – and for defining a lobbying entity and a lobbyist.

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" would address these matters.

1.3.4 Summary

The GRPA supports the ICAC Report's observation (p37) that: "There is no difference in principle, method or in its effect between lobbying conducted by a third party lobbyist and that conducted by any other entity seeking to persuade government of its view".

In all the examples provided above, the GRPA contends that the "contact with a government representative in an effort to influence State or local government decision-making" is clear, yet the intent of the Act, the Code and the Register to ensure "transparency and integrity…in the public interest" is absent.

The GRPA argues that all these anomalies are incongruous and should be redressed. The rules should apply to all who, by reasonable definition, undertake lobbying.

1.4 Amendments to the *Integrity Act 2009*

For the reasons set out above, and to correct anomalies and inconsistencies, the GRPA recommends that the definitions of "lobbyist" and "related concepts" under Chapter 4, Part 1 of the *Integrity Act 2009* be amended to expand the definition and remove most exemptions:

> **41 Meaning of *lobbyist* and related concepts**
>
> **(1) A *lobbyist* is an entity that carries out a lobbying activity ~~for a third party client~~ or whose employees or contractors carry out a lobbying activity ~~for a third party client~~.**
>
> **(2) To remove any doubt, it is declared that a lobbying activity may be carried out ~~for a third party client~~ even though no fees are payable for carrying out the lobbying activity.**
>
> **(3) However, none of the following entities is a lobbyist—**
>
> **~~(a) a non-profit entity;~~**
> **~~(b) an entity constituted to represent the interests of its members;~~**
> ***~~Examples—~~***
> **~~• an employer group~~**
> **~~• a trade union~~**
> **~~• a professional body, for example, the Queensland Law Society~~**
> **(c) members of trade delegations visiting Queensland;**
> **~~(d) an entity carrying out incidental lobbying activities;~~**
> **~~(e) an entity carrying out a lobbying activity only for the purpose of representing the entity's own interests.~~**
>
> **(4) Also—**
> **(a) an employee or contractor of, or person otherwise engaged by, an entity mentioned in subsection (3) ~~(a) to~~ (c) is not a lobbyist in relation to contact carried out for the entity~~; and~~**
> **~~(b) an employee of an entity mentioned in subsection (3)(c) is not a lobbyist in relation to contact carried out for the entity.~~**
>
> **~~(5) A *non-profit entity* is an entity that is not carried on for the profit or gain of its individual members.~~**
> ***~~Examples of entities that may be non-profit entities—~~***
> **~~a charity, church, club or environmental protection society~~**
>
> **~~(6) An entity carries out *incidental lobbying activities* if the entity undertakes, or carries on a business primarily intended to allow individuals to undertake, a technical or professional occupation in which lobbying activities are occasional only and incidental to the provision of professional or technical services.~~**
> ***~~Examples of entities for subsection (6)—~~***

- ~~an entity carrying on the business of providing architectural services as, or by using, a practising architect under the *Architects Act 2002*~~
- ~~an entity carrying on the business of providing professional engineering services as, or by using, a registered professional engineer under the *Professional Engineers Act 2002*~~
- ~~an entity carrying on the business of providing legal services as an Australian legal practitioner or a law practice under the *Legal Profession Act 2007*~~
- ~~an entity carrying on the business of providing accounting services as, or by using, an accountant who holds a practising certificate issued by CPA Australia, the Institute of Chartered Accountants in Australia or the National Institute of Accountants~~

1.4.1 New Exemptions

The GRPA asserts that some exemptions should be included in the *Integrity Act 2009*. However, they should relate to certain types of activity and not to specific organisations or industries.

Such new exemptions could be included in an addition to the *Integrity Act 2009* at Chapter 4, Part 1, 42. Meaning of lobbying activity and contact:

(2) However, the following contact is not a lobbying activity -

- **a request for information which does not involve an effort to influence State or local government decision-making;**
- **organising a meeting with a government representative;**
- **market research and/or surveys;**
- **community and stakeholder engagement activities;**
- **event management and logistics.**

In most of these examples, contact with a government representative will be by a junior staff member of a firm. These activities are clearly not lobbying and should be specifically exempted from the Act.

2 ICAC Recommendations

Recommendation 1

The Commission recommends that the NSW Government enacts legislation to provide for the regulation of lobbyists, including the establishment and management of a new Lobbyists Register.

- **The GRPA notes that this recommendation has been enacted in Queensland.**

Recommendation 2

The Commission recommends that the NSW Premier develops a model policy and procedure for adoption by all departments, agencies and ministerial offices concerning the conduct of meetings with lobbyists, the making of records of these meetings, and the making of records of telephone conversations. As a minimum, the procedure should provide for:

a. a Third Party Lobbyist and anyone lobbying on behalf of a Lobbying Entity to make a written request to a Government Representative for any meeting, stating the purpose of the meeting, whose interests are being represented, and whether the lobbyist is registered as a Third Party Lobbyist or engaged by a Lobbying Entity

- **The GRPA notes that this recommendation has been enacted in Queensland.**

b. the Government Representative to verify the registered status of the Third Party Lobbyist or Lobbying Entity before permitting any lobbying

- **The GRPA notes that this recommendation is in effect in Queensland.**

c. meetings to be conducted on government premises or clearly set out criteria for conducting meetings elsewhere

- **The GRPA asserts that this is a prescriptive and impractical recommendation. While the majority of interactions between lobbyists, their clients and government representatives likely do take place on government premises, there are many times when a meeting may be conducted on the site of a project, at a client's office, at a lobbyist's or other consultant's office or other suitable location.**

- **While the ICAC recommendation envisages the opportunity to "set out criteria for conducting meetings elsewhere" this is an additional administrative burden to normal business.**

- **The catalyst for this recommendation, according to the ICAC Report, appears to be one of propriety. However, if all parties to the meeting are bound by and abide by the relevant legal requirements (either as Ministers, councillors, public servants, lobbyists or other advisers) then the location of any meeting is not relevant to achieving the "public expectation of transparency and integrity".**

- **Determining the best/most appropriate location for a meeting should be at the discretion of the parties involved and by agreement. The GRPA does not support this recommendation.**

d. the minimum number and designation of the Government Representatives who should attend such meetings

- **While this is ultimately a matter for government, the GRPA believes that this recommendation is too prescriptive.**

- **As an observation, the GRPA believes it should be for the most senior government representative involved to determine which and how many government representatives attend any meeting.**

- **If the government representative/s act in accordance with their reporting obligations (as per recommendation 2e below), then an appropriate record of the meeting will be taken. The number and designations of attendees would seem to be immaterial.**

e. a written record of the meeting, including the date, duration, venue, names of attendees, subject matter and meeting outcome

- **The GRPA notes that this recommendation has been enacted in Queensland.**

f. written records of telephone conversations with a Third Party Lobbyist or a representative of a Lobbying Entity.

- **The GRPA expresses its concern with the words "telephone conversations" in the recommendation. As set out earlier in this submission, there can be many contacts with government representatives which do not constitute lobbying activity.**

- **The GRPA recommends that written records should be required only for "telephone lobbying activity".**

Recommendation 3

The Commission recommends that the NSW Premier requires all government agencies and ministerial offices to ensure that they have adequate measures in place to comply with the State Records Act 1998.

- **The GRPA notes that this recommendation has been enacted in Queensland.**

Recommendation 4

The Commission recommends that the NSW Government amends the definition of "open access information" in the Government Information (Public Access) Act 2009 to include records of Lobbying Activities for which there is no overriding public interest against disclosure.

- **The GRPA accepts the nature of the arguments presented by ICAC in its report. However, the GRPA's concerns are with respect to proper protection for commercial-in-confidence information. The GRPA notes that the ICAC report references the NSW *Government Information (Public Access) Act 2009* which provides for a public interest consideration against disclosure where disclosure could reasonably "prejudice any person's legitimate business, commercial, professional or financial interests". There is concern that oversight or error could readily result in disclosure of commercial-in-confidence information.**

- **Subject to any similar access via the *Right to Information Act 2009*, commercial-in-confidence discussions with government representatives must be protected. Any potential for public disclosure may result in a reluctance by parties to share commercial-in-confidence information with government, which would be detrimental to the good functioning of government.**

Recommendation 5

The Commission recommends that all agencies subject to the operation of the Government Information (Public Access) Act 2009 proactively release lobbying information for which there is no overriding public interest against disclosure, including by publishing that information on their websites.

- **The GRPA rejects this recommendation.**

- **On the GRPA's assessment, including its review of the ICAC Report, there is no compelling reason for the proactive release of information that no individual or agency has sought.**

- **If all the elements of the *Integrity Act 2009*, the Code of Conduct, the Register of Lobbyists and the various reporting obligations of government are functioning as required, then all the information which an inquirer might seek is recorded and available upon request (subject to any commercial-in-confidence considerations).**

- **The GRPA is of the view that proactively releasing information, which has not been sought, discriminates against "lobbyists" – information from no other business sector which interacts with government appears to be recommended for proactive release – and further marginalises properly registered lobbyists from other professional services providers.**

- **If the GRPA's proposal to extend the definition of lobbyists to include other professionals and in-house employees is successful, the GRPA's argument still stands that the release of information that no-one has sought is unwarranted.**

- **The *Right to Information Act 2009* provides all the processes required to facilitate public access to information.**

Recommendation 6

The Commission recommends that the NSW Government develops a new code of conduct for lobbyists, which sets out mandatory standards of conduct and procedures to be observed when contacting a Government Representative. The code should be based on the current NSW Government Lobbyist Code of Conduct, and include requirements that lobbyists must:

a. inform their clients and employees who engage in lobbying about their obligations under the code of conduct

b. comply with the meeting procedures required by Government Representatives with whom they meet, and not attempt to undermine these or other government procedures or encourage Government Representatives to act in breach of them

c. not place Government Representatives in the position of having a conflict of interest

d. not propose or undertake any action that would constitute an improper influence on a Government Representative, such as offering gifts or benefits.

- **The GRPA supports this recommendation and notes that it has been enacted in Queensland. The GRPA would support efforts to harmonise the various Codes of Conduct operating across jurisdictions.**

Recommendation 7

The Commission recommends that the legislation, enacted in accordance with Recommendation 1 of this report, includes a provision that a Government Representative not permit any Lobbying Activity by a Third Party Lobbyist or any person engaged by a Lobbying Entity, unless the Third Party Lobbyist or the Lobbying Entity is registered on the proposed Lobbyists Register.

- **The GRPA supports this recommendation and notes that it has been enacted in Queensland.**

Recommendation 8

Note: the parts of this recommendation have been separated so the GRPA can respond to specific elements.

The Commission recommends that all Third Party Lobbyists and Lobbying Entities be required to register before they can lobby any Government Representative.

- **The GRPA supports this part of the recommendation that all lobbyists be required to register before they can lobby any government representative and notes that it has been enacted in Queensland.**

This register would comprise two panels; one for Third Party Lobbyists and one for Lobbying Entities.

- **The GRPA does not support the creation of a separate panel, or register, for Lobbying Entities.**

- **As set out earlier in this submission, it is the view of the GRPA that the definitions of "lobbyist" and "lobbying activity" should be extended/amended. It is the further view of the GRPA that all lobbyists (as defined) should be captured on a single Register of Lobbyists and the same disclosure rules applied to all.**

- **The GRPA's accepts the ICAC Report's recommendation to create a new category of Lobbying Entity. However, if two separate categories are adopted in Queensland, then all registrants should be captured on a single Register of Lobbyists.**

- **Operationally, the Queensland Register of Lobbyists requires a lobbying entity (a company or business, with an ABN) to be registered, that company's employees who undertake lobbying activities to be registered and named, as well as listing all the clients for which it lobbies.**

- **Under the ICAC Report (p47), a Third Party Lobbyist and/or a Lobbying Entity would only need to register itself and nominate a "responsible person". (Other than for a self-employed third party lobbyist) none of the employees who undertake lobbying activities would be required to be identified. The Third Party Lobbyist must also disclose its clients. The ICAC Report states that information about individuals who lobby would eventually be discovered in a "lobbying record". Such a proposal discriminates against "third party lobbyists" in Queensland who, if legitimately registered, disclose their company name, owners names, names of all employees involved in lobbying, names of current clients and former clients (up to 12 months prior) for whom lobbying is undertaken.**

- **The GRPA believes that enabling Third Party Lobbyists and/or Lobbying Entities to avoid full public disclosure of their employees who undertake lobbying activity defeats the intent of the Act, Code and Register for "public expectation of transparency and integrity".**

- **As has been argued earlier in this submission, it should be the acts of "contact" and "an effort to influence" that are the determining factors with respect to lobbying. If that is the case, then all individuals who "contact…in an effort to influence" should be identified on a single Register of Lobbyists.**

- **The Queensland Lobbyists Code of Conduct includes Standards of Conduct for Lobbyists. These standards relate to the actions of individuals, not companies. The GRPA is of the view that, if the Code is to apply effectively and equally to all those who lobby, then full disclosure of such individuals should be required on the associated Register of Lobbyists.**

- **If the Integrity Commissioner proceeds with the ICAC recommendation to establish a category of registration for Lobbying Entities who act on their own behalf, the GRPA would welcome such a move as a positive step towards achieving full public disclosure of lobbying activity in Queensland. The GRPA would envisage such a category of registration being limited and applying only to employer organisations, trade unions, industry associations and the like.**

Both Third Party Lobbyists and Lobbying Entities would disclose on the register the month and year in which they engaged in a Lobbying Activity, the identity of the government department, agency or ministry lobbied, the name of any Senior Government Representative lobbied, and, in the case of Third Party Lobbyists, the name of the client or clients for whom the lobbying occurred, together with the name of any entity related to the client the interests of which did derive or would have derived a benefit from a successful outcome of the lobbying activity

- **The GRPA rejects this recommendation and does not support any move to require additional reporting of lobbying activity.**

- **The GRPA supports the Queensland Lobbyists Code of Conduct preamble that: "The public has a clear expectation that lobbying activities will be carried out ethically and transparently, and that government representatives who are approached by lobbyists are able to establish whose interests the lobbyists represent so that informed judgments can be made about the outcome they are seeking to achieve". These objectives are met in full through the proper use and maintenance of the Register of Lobbyists, adherence to the *Integrity Act 2009* and the Lobbyists Code of Conduct and, for GRPA members and RCGs, the Government Relations Advisors' Code of Conduct.**

- **Transparency of lobbying activity is achieved through the sound operation of the Register of Lobbyists. The register discloses who is representing whom. To the extent that the details of that representation are of public interest (and not commercial-in-confidence), that information will be available through access to records of the meeting maintained by public officials.**

- **The GRPA argues that the responsibility for government record keeping rests with government. The *Public Records Act 2002* sets out the rules relating to the taking and keeping of records by government. It is not the responsibility of external parties to provide government with the record of any interaction. The taking of records by a third party, in this instance a registered lobbyist (eg from a meeting) is a matter solely between the registered lobbyist and their client. Any confirmation of outcomes, clarifications, thank yous or requests for further information to government are a matter for the lobbyist and their client to initiate.**

- **The GRPA contends that if government is seeking transparency and integrity in lobbying activities, it should encourage the registration of 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. At this time, such a burden is imposed on only registered, third-party lobbyists and their clients. However, the GRPA would be equally opposed if similar requirements were placed across all organisations engaged with lobbying.**

- **Additionally, the compliance costs for companies/individuals for any additional reporting and the increased bureaucratic burden would be onerous.**

Recommendation 9

The Commission recommends that an independent government entity maintains and monitors the Lobbyists Register, and that sanctions be imposed on Third Party Lobbyists and Lobbying Entities for failure to comply with registration requirements.

- **The GRPA supports this recommendation and notes that it has been enacted in Queensland.**

- **The GRPA supports the need for appropriate sanctions for breaches of the Queensland Lobbyists Code of Conduct.**

- **For the Commissioner's information, the GRPA's Constitution includes provisions for membership termination, under the determination of the GRPA Ethics and Standards Committee, including if the member does not comply with the provisions of the GRPA rules, or breaches the Code of Conduct, or conducts himself or herself in a way considered to be injurious or prejudicial to the character or interests of the association.**

Recommendation 10

The Commission recommends that the new code of conduct for lobbyists contains a clear statement prohibiting a lobbyist or a lobbyist's client from offering, promising or giving any gift or other benefit to a Government Representative, who is being lobbied by the lobbyist, has been lobbied by the lobbyist or is likely to be lobbied by the lobbyist.

- **The GRPA supports this recommendation and notes that it has been enacted in Queensland.**

Recommendation 11

The Commission recommends that, consistent with restrictions currently contained in the Australian Government Lobbying Code of Conduct, the proposed lobbying regulatory scheme includes provisions that former ministers and parliamentary secretaries shall not, for a period of 18 months after leaving office, engage in any Lobbying Activity relating to any matter that they had official dealings with in their last 18 months in office. The Commission also recommends that former ministerial and parliamentary secretary staff and former Senior Government Representatives shall not, for a period of 12 months after leaving their public sector position, engage in any Lobbying Activity relating to any matter that they had official dealings with in their last 12 months in office.

- **While this is ultimately a matter for government to determine, the GRPA notes that this recommendation reflects, in principle, similar rules in other jurisdictions, including Queensland.**

- **The GRPA has argued for harmonisation of Acts, Codes and Registers across Australian jurisdictions. In support of that goal, the GRPA recommends the *Integrity Act 2009* be amended to reflect the ban periods in the Commonwealth and (proposed) NSW jurisdictions, ie reduce the related lobbying activity ban on senior government representatives from two years to 18 months for former Ministers and Parliamentary Secretaries and to 12 months for former ministerial and parliamentary secretary staff and former senior government representatives.**

- **The GRPA also draws to the Commissioner's attention to significant anomalies in the application of the bans.**

- **For example, under the *Integrity Act 2009*, a Ministerial Policy Advisor to the Minister for Employment, Skills and Mining could leave Government tomorrow and work as a full-time employee for a mining company and "for 2 years after becoming a former senior government representative, the former senior government representative" is freely able to "carry out related lobbying activity" for their employer. However, if the same Ministerial Policy Advisor left Government tomorrow to work in a firm which provided third party government relations advice to the same mining company, then for the next two years they "must not carry out related lobbying activity for a third party client". In these two examples, the same individual has two different sets of rules which might apply, dependant on their employment status and not on the lobbying activity they undertake.**

- **Or a former Main Roads bureaucrat can work for a trucking company as an in-house government relations advisor the day after they retire. Yet, that same former bureaucrat is barred for two years from working at a consultancy and providing the same services and advice to that trucking company as an outside consultant. The same in-house person is also eligible for appointment to a government board, whereas, as a registered lobbyist, he or she is not. This is an anomaly which should be rectified.**

Recommendation 12

The Commission recommends that the new lobbying regulatory scheme includes a prohibition of the payment to or receipt by lobbyists of any fee contingent on the achievement of a particular outcome or decision arising from a Lobbying Activity.

- **The GRPA notes that this recommendation has been enacted in Queensland.**

- **The GRPA is concerned that this prohibition applies only to registered lobbyists and that a financier, lawyer, accountant, town planner, full time employee of an entity, a not-for-profit organisation or anyone other than a registered lobbyist can receive a success fee for a successful lobbying campaign which influences a State or local government decision.**

- **The GRPA also notes the inequity of the current restriction in Queensland whereby the State is able to engage organisations that influence the outcomes of government decisions and are rewarded on the basis of contingency fees, as evidenced through the recent assets sales campaigns.**

Recommendation 13

The Commission recommends that the NSW Government amends the Model Code of Conduct for Local Councils in NSW or otherwise introduces a protocol for the regulation of contact between council staff and applicants for development proposals (including those acting for applicants), similar to that established by the NSW Department of Planning but taking into account the circumstances and resources of local government.

- **The GRPA notes that the intent of this recommendation has been enacted in Queensland.**

- **The GRPA also notes that the Local Government Association of Queensland (LGAQ) has issued relevant guidelines to its members. It a September 2010 commentary to the LGAQ on its guidelines, the GRPA asked the LGAQ to consider issues associated with:**

    - **The undertaking of a formal community and stakeholder engagement process associated with a Development Application, eg a Divisional Councillor (where they exist) would be one of the key stakeholders on a list to be briefed about a project. In the GRPA's view this is not lobbying (there is no attempt to influence a decision) but rather part of normal communications.**

      As set out in the submission above, the GRPA has sought to have this distinction recognised in the *Integrity Act 2009.*

    - **Technical matters as opposed to lobbying matters, eg progress of a Development Application through normal channels and meetings with officers and/or councillors versus specific attempts to influence a decision or policy.**

    - **The capture of all lobbying activities. The *Integrity Act 2009* provides exemptions for "professionals" including lawyers (town planners, accountants, etc). However, all of these professionals regularly undertake lobbying as defined by the Integrity Act. The GRPA believes all persons undertaking lobbying as defined by the Act should be captured by the Act. By using the Integrity Act definitions, the LGAQ policy continues the exclusion of the vast majority of individuals who undertake lobbying and restricts the policy only to lobbyists who are registered and agree to abide by a Code of Conduct.**

Recommendation 14

The Commission recommends that the NSW Government amends procedures for the making of applications to local councils that require council approval, determination or decision to include provision for a declaration by applicants of affiliation with any council officer. In this instance, affiliation means by way of family, close personal friendship, or business interest with the council officer in the previous six months. Applicants should have brought to their attention the existence of criminal sanctions for false declarations, and that the obligation to disclose an affiliation is ongoing until the conclusion of all council determinations, approvals or decisions with regard to the application.

- **The ICAC Report concludes that third-party lobbyists are rarely involved in local government meetings. Nevertheless, the GRPA rejects this recommendation.**

- **The GRPA is of the view that responsibility for identifying and resolving any potential conflict of interest should rest with the responsible council officer (as it should in the State Government jurisdiction).**

- **For example, corporations law in Australia requires that a director must not place themselves in a position where there is an actual or substantial possibility of conflict between a personal interest or a duty owed elsewhere and the director's duty to act in the best interests of the company. Without access to the corporate governance rules for local government, it would nevertheless be reasonable to assume that a similar requirement forms part of employment contracts and/or council policies. The ICAC proposal would reverse the onus of responsibility which is entrenched in Australia corporations law and it is the view of the GRPA that conflicts of interest should be dealt with internally (by council and government). There is no need for another set of rules.**

- **For third parties, the GRPA notes that if ICAC extended its proposed new code of conduct for lobbyist to include local government – as is the case in Queensland - then this issue would be resolved through the mandatory requirement that a lobbyist must "not place Government Representatives in the position of having a conflict of interest".**

Recommendation 15

The Commission recommends that sanctions should apply to applicants who submit a false declaration.

- **The GRPA restates its opposition (above) to a new declaration requirement.**

- **However, the GRPA supports the need for appropriate sanctions for breaches of the Queensland Lobbyists Code of Conduct.**

Recommendation 16

The Commission recommends that all local councils implement procedures that:

a. necessitate an assessment of whether an application, in which a declaration is made that an affiliation exists, requires management

b. require the management of such applications to avoid where possible, or supervise if necessary, the role of the affiliated council officer.

- **The GRPA restates its opposition (above) to a new declaration requirement.**

Recommendation 17

The Commission recommends that the NSW Government amends the Model Code of Conduct for Local Councils in NSW or otherwise introduces a protocol that council officers engage only with applicants who have submitted a declaration of affiliation.

- **The GRPA restates its opposition (above) to a new declaration requirement.**

- **If the GRPA's proposal that all entities and individuals who undertake lobbying activity are included on the Register of Lobbyists, any local government could interrogate the Register prior to engagement with a lobbyist. This is the process which applies in Queensland for any lobbying activity with a government representative.**

- **With respect to engagement with "applicants", the GRPA restates its position with respect to the appropriate handling of conflicts of interest.**

3 The Integrity Act 2009

3.1 Listing of Former Clients

Both the Commonwealth and New South Wales regimes require their respective Registers of Lobbyists to include the names of persons (clients) for whom the lobbyist has provided paid or unpaid services as a lobbyist during the previous three months.

The Queensland regime requires this same information, but for a period of the previous 12 months.

The GRPA strongly supports the proposition that some uniformity of registers across jurisdictions must be achieved. 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.

The GRPA therefore proposes an amendment to the *Integrity Act 2009* at Division 2 Register, 49 Register (3) (d):

> **the name of each client for which the lobbyist has carried out a lobbying activity within the ~~12~~ 3 month period before the lobbyist most recently gave the integrity commissioner the particulars under this division or section 53;**

3.2 Integrity Testing

The GRPA does not support the ICAC Report observation (p55) that: "To require integrity testing for those who lobby, other than as third party lobbyists, is to engage in a form of disenfranchisement".

To the contrary, to subject only third party lobbyists to an integrity test is discriminatory.

The *Integrity Act 2009*, in effect, enables an individual who has been "sentenced to a term of imprisonment of 30 months or more" or who has "any dishonesty offence for which the person has, as an adult, had a conviction in the previous 10 years" to undertake lobbying activity if they are a full-time employee representing their firm – because they do not need to register as a lobbyist. The same person applying for registration as a third party lobbyist may be denied registration.

The GRPA does not support criminal or dishonest behaviour, but is seeking a level playing field for any person who seeks to engage formally with government.

3.3 Former Senior Government Representatives

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 the *Integrity Act 2009* 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.

3.4 Disclosure of Information

The GRPA draws the Commissioner's attention to the *Integrity Act 2009* at Part 4 Miscellaneous, 72A Disclosure of information.

The GRPA is concerned at the lack of a "trigger" for action contained in subsection (2) which states: "The responsible person for the government representative may give the integrity commissioner information about the lobbyist or lobbying activity if the responsible person reasonably believes the information may be relevant to the functions or powers of the integrity commissioner…".

The GRPA is also concerned that subsection (3) enables a responsible person to provide personal information about a lobbyist, a lobbyist's employee or a lobbyist's client.

The GRPA believes these clauses are too open-ended and would enable a disaffected responsible person to make vexatious referrals to the Integrity Commissioner.

The GRPA calls for a new/improved definition in subsection (2) to specify the "information that may be relevant to the functions or powers of the integrity commissioner" and to minimise the opportunity for vexatious complaints.

3.5 Harmonisation

The GRPA strongly supports the proposition that some uniformity of Registers of Lobbyists 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.

The GRPA encourages the Integrity Commissioner to explore all reasonable avenues to achieve harmonisation.

4 Summary

The GRPA appreciates the opportunity to provide the Integrity Commissioner with a submission to assist with his review of the operation of the lobbying provisions of the *Integrity Act 2009.*

The GRPA Committee appreciates the access the Commissioner and his staff have provided over the past year and we look forward to continuing to work with the Commission office to improve the processes of lobbying in Queensland.

If the Commissioner or Commission staff require any additional information, or clarification, please don't hesitate to contact me.

Yours sincerely

BARTON GREEN
PPRESIDENT