Review of the Integrity Act
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Review of the Integrity Act

In response to a request for submissions issued by the Department of Premier and Cabinet, the Government Relations Professionals Association Incorporated (GRPA) makes this submission to the Review of the *Integrity Act 2009* Issues Paper.

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 Queensland Integrity Commissioner's June 2011 report on his *Review of the Integrity Act 2009, Chapter 4 ("Regulation of lobbying activities")*, 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 the Government take into full account the views and experiences of the GRPA and its members (which includes registered lobbyists in Queensland, Victoria and New South Wales, as well as in-house government relations professionals) in determining any action.

The GRPA is available to the Government for further discussions on the Integrity Act.

Yours sincerely

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1. Comment on the Review of the *Integrity Act 2009* Issues Paper

The Issues Paper, under the section entitled Queensland's Integrity and Accountability Framework, Lobbying, states:

"The Integrity Act provides the legislative framework for the regulation of the lobbying industry..."

As supported by its comments below, the GRPA contends that this is not the case.

As the Integrity Act is constructed at present, it provides a legislative framework for the regulation of lobbyists who are registered, and for government representatives. The Act does not regulate the activities of the majority of individuals and entities which undertake lobbying activity.

Some of the recommendations from ICAC and the Integrity Commissioner, if implemented, will go some way to restoring regulatory balance to all who undertake lobbying activity.

1.1 Definitions

The GRPA acknowledges that some changes to definitions and exemptions have been proposed by the Integrity Commissioner and discussed in the Issues Paper. However, for the sake of consistency, the GRPA restates its position with respect to some definitions.

For the reasons set out below, 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**~~

1.2 Lobbyists v Government Relations Professionals

The GRPA has had the opportunity to review the Integrity Commissioner's response to the State Government's Issues Paper and notes that reference has been made to resistance to the use of the word "lobbyist". In the GRPA's experience, this resistance is universal – across Australia and internationally.

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".

2. Response to the Integrity Commissioner's eight recommendations

2.1 Third-party and In-house Lobbyists

1. That the lobbyists registration scheme be made to meet public expectations of transparency and integrity by requiring the registration of some of those third party lobbyists that are excluded at the moment and by making special provision to ensure that in-house lobbyists are also covered, though not by precisely the same regime as third party lobbyists.

In his 2009-10 annual report, the Integrity Commissioner noted that he had given evidence to the ICAC inquiry and indicated that he "favoured an increase in the regulatory regime to cover many people who lobby government but do not fall within the current statutory definition of what (or who) is a lobbyist. At that stage I (*the Commissioner*) suggested that the definition of who is a lobbyist should be greatly broadened to include organisations that employ in-house lobbyists, representative organisations of doctors, engineers, property developers etc, and all other organisations that seek to influence State or local government decision-making".

This position is supported by the GRPA.

The Issues Papers (p.3) and the Queensland Lobbyists Code of Conduct state 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...". The GRPA argues that the public's expectation is not restricted to only third-party lobbyists. If the public has an expectation, it would be fair to assume that the expectation applies to all lobbying, and not just activities by registered lobbyists on behalf of third-party clients. If this is the case, then the public's expectation can not be met if the majority of lobbying activity in Queensland is neither registered nor disclosed.

The Integrity Commissioner's June 2011 report makes a strong argument for capturing all relevant entities under the Act and Code where he states (p12): "...registration (as a lobbyist) would have two other important consequences. The first is the corporation, in its lobbying of government representatives, would be bound by the relevant parts of the Lobbyists Code of Conduct. Second, a government representative would need to record relevant details of any such contact. Both would help satisfy public expectations of transparency, integrity and honesty".

The ICAC report recommended 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".

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.

The GRPA does not, however, support the creation of a separate panel, or register, for Lobbying Entities. The GRPA encourages 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 Government to amend the Integrity Act to ensure the definition of "lobbyist" does not include exemptions for other professionals, such as town planners, lawyers and accountants.

As set out 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.

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, and 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 would defeat the intent of the Act, Code and Register with respect to the public's expectation of transparency and integrity.

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. 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 Government adopts 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 is firm in its view that all parties and individuals who engage in lobbying activity should be required to comply with the Integrity Act and the Code of Conduct. Such an approach would remove the current anomalous exceptions that occur in Queensland.

2.1.1 GRPA Membership Criteria

As a matter of comparison for the Government, the GRPA has two categories of membership – one for individuals and one for Registered Consultancy Groups. To assist the understanding of the GRPA's arguments, 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 Government'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.

Whilst government relations is a principal activity for these companies, it is not their 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 GRPA argument to include other professional services firms such as lawyers, accountants, town planners and business advisors, (and their relevant employees/partners) who similarly provide their clients with a range of services, including lobbying.

Though 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.

The GRPA notes the incidental lobbying provisions are specifically considered in the Issues Paper and the GRPA's response is presented below.

2.1.2 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 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.

2.2 Exemptions

2. That s.41(3)(b) of the Integrity Act be amended to provide an exemption only for representatives of employers and employees and professional bodies such as the Queensland Law Society and that there be no general exemption for entities constituted to represent the interests of members.

The GRPA supports this recommendation, but argues that it should be extended to any individual or entity which undertakes lobbying activity. If, however, it is kept in this form, some better definition of who is "in" and who is "out" will be required.

The ICAC and Integrity Commissioner's recommendations for a broader definition of Third Party Lobbyist, and ICAC's proposal to create a Lobbying Entity category, would 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, public servants or councillors on behalf of themselves, their employer, a third party or their membership/constituency.

As previously stated, 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.

The successful influencing of a government policy or decision by a not-for-profit organisation could have just as significant ramifications for Queenslanders 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.

In discussing the issue of in-house lobbyists, the Issues Paper states that "transparency already exists in relation to in-house lobbyists who are clearly representing their employer's interests in dealing with government". On this basis, then, it is the purpose of the Integrity Act to be more concerned about "who" is lobbying rather than the fact that lobbying has occurred. The GRPA contends that this misplaced emphasis on an individual or entity, and not on their actions, does not satisfy the Integrity Act's intent.

The GRPA does not argue for disclosure rules to be extended to include the purpose of a contact (which is often commercial-in-confidence). Rather, the GRPA argues that it is not "who is lobbying", but the "act of lobbying" which should determine which individuals and entities are captured by the Act and required to register.

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 (at the moment).

2.2.1 Inconsistencies

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 or local 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.

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. Under s.70 of the Integrity Act, they are 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 above.

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.**

These activities are clearly not lobbying and should be specifically exempted from the Act.

2.3 Incidental Lobbying

3. That subsections 41(3)(d) and 41(6) be deleted from the Act.

The GRPA supports this recommendation.

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.

2.4 Unregistered Lobbyists

4. That there be a requirement (added to s.71) that a government representative must not allow themselves to be lobbied by an unregistered entity unless that entity undertakes to observe the relevant parts of the Lobbyists Code of Conduct in its dealings with the government.

The GRPA understands the intent of this recommendation, but rejects it on a matter of principle.

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

This recommendation would appear to argue that, despite being in breach of the Integrity Act, an unregistered entity may still be able to conduct a lobbying activity.

The Integrity Commissioner, in his June 2011 report, said: "If it was considered necessary it could be replaced by a provision in s. 71 to allow a government representative to permit an unregistered entity to have a lobbying contact in circumstances the government representative considered on reasonable grounds that the contact was rare and was clearly incidental to the provision of professional or technical services. However I do not believe that this is either necessary or desirable".

The GRPA agrees it is neither necessary nor desirable.

2.5 Sustainable Planning Act

5. That s.42(1)(e) of the Integrity Act be deleted and instead its provisions be included under s.42(2) as matters that are not a lobbying activity.

The GRPA does not support this recommendation and nor does it agree with the arguments presented by the Integrity Commissioner in his June 2011 report.

Of all the industries on whose behalf lobbying activity may be conducted, planning and development approval is likely to be the most common. It is the GRPA's view that to make this aspect of lobbying exempt from the Act contradicts the intent of the Act.

The GRPA does not argue that Queensland should implement the same restrictions that apply in the (quite different) circumstances in New South Wales. But an outcome of the Commissioner's recommendation would be to make it almost impossible to reconcile the differing lobbying rules in the different jurisdictions. It may also inadvertently (and wrongly) endorse a proposition that the recent planning and development issues in New South Wales could not occur in Queensland. They have not - and vigilant regulation of this area will help to ensure they do not.

The GRPA argues that s.42(2)(j) of the Integrity Act, which exempts "contact only for the purpose of making a statutory application", provides sufficient "wriggle room" for town planners, lawyers and others conducting "technical" activities.

2.6 Sanctions

6. That a sanctions regime be introduced for breaches of s.71(1) and (2) of the Integrity Act.

The GRPA supports this recommendation.

The GRPA also notes that a sanctions regime, which includes sanctions against a government representative who knowingly deals with an unregistered lobbyist working for a third-party client, is discriminatory when compared to the Integrity Commissioner's recommendation to permit such activity in the case of unregistered entities (recommendation 4, above).

Rules and sanctions should apply equitably to all.

For the Government'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.

2.7 Disclosure

7. That s.72A be amended to make it clear that a "responsible person for a government representative" has an obligation to disclose to the Integrity Commissioner, if requested, information about contacts that amount to lobbying, whether by registered lobbyists or otherwise.

While this is a matter for Government, the GRPA supports the intent of the recommendation.

2.8 Record Keeping

8. That s.72A should include a note pointing out that the Public Records Act requires that records must be made and kept of all contacts where entities seek to influence government decision making, whether the entity is registered or not.

The GRPA has consistently argued that the *Public Records Act* contains all the necessary provisions for record-keeping and that additional reporting regimes which have been introduced solely for dealings with registered lobbyists are discriminatory and unnecessary.

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. While not a part of the Issues Paper, the GRPA restates its position that 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, eg by a registered lobbyist at 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.

2.8.1 Integrity Commissioner's Proposal

The GRPA has reviewed the Integrity Commissioner's response to the State Government's Issues Paper and strongly opposes the Commissioner's intention to amend the Lobbyists Code of Conduct to impose additional reporting obligations on lobbyists.

The Commissioner advises this his sampling (limited audit) of records provided by State Government Departments regarding their contact with lobbyists "has not persuaded me that they give me an accurate and adequate picture of the lobbying of the public sector by third party professional lobbyists". The Commissioner further states: "I consider that I do need some reporting from lobbyists to supplement information available from the public sector", which is proposed by amending the Lobbyists Code of Conduct.

The GRPA argues that properly registered lobbyists should not be burdened with rectifying the inadequacies of public service record keeping. It is a legal obligation for public servants to keep records of meetings – and an additional requirement for specific records to be kept of dealings with registered lobbyists. On what basis should the private sector (lobbyists) be required to do a public servant's work?

The imposition of specific recording and reporting obligations on registered lobbyists to the Integrity Commissioner is unwarranted and discriminatory.

GRPA members have advised they have neither the administrative support nor the centralised recording systems to meet the Commissioner's proposed new reporting requirements. It would be a significant administrative burden - both in terms of cost and resources – for new systems to be developed and managed inside consultancies. In some GRPA member offices, there are several registered consultants who each work independently on their own clients. They do not record their activities in any central register.

Additionally, for the majority of GRPA members and their clients, strict confidentiality agreements are in place to ensure commercial-in-confidence information is not disclosed. Such confidentiality clauses are incorporated into service agreements or employment agreements and are binding on government relations advisors, whether external consultants or in-house employees. The confidentiality obligations can even include reference to a project name, where a sensitive project or idea is in development. Any report to the Commissioner or the government could breach those confidentiality undertakings. Despite the Commissioner's stated intention to request a "limited amount of information" and "publish at least some de-personalised statistical data", the request for information, alone, will concern GRPA members and their clients.

The result of the Commissioner's proposed new reporting requirements may lead to a number of outcomes for GRPA members, including:

- **Clients declining to engage a properly registered lobbyist for fear of confidential information being provided to a third party**

- **Clients moving their government relations business to other professional services areas which are not required (at present) to be registered, whose interactions with government are not required (at present) to be specifically recorded as contact with a lobbyist, and who are not bound (at present) by the Lobbyists Code of Conduct**

- **Lobbyists removing themselves from the register and declining to undertake lobbying activity and instead confining their activities to strategic advice to clients, thereby being unavailable to attend meetings and briefings.**

None of these potential outcomes enables "professional lobbyists (to) play a legitimate role in the democratic process by assisting individuals and organisations to communicate their views on matters of public interest to government", as described in the Issues Paper.

The GRPA does not support any move to require additional reporting of lobbying activity. The GRPA supports the Lobbyists Code of Contact 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 Lobbyists Register and adherence to the Lobbyists Code of Contact and the Government Relations Advisors' Code of Conduct.

No further reporting is required.

3 Issues Paper Questions

3.1 Integrity Commissioner

Do you consider that the role and functions of the Integrity Commissioner are appropriate or are there ways in which they could be improved?

The GRPA Committee appreciates the access the Commissioner and his staff have provided over the past 18 months and looks forward to continuing to work with the Commission office to improve the processes of lobbying in Queensland.

The GRPA wishes to acknowledge the efforts of the Integrity Commissioner and his staff in exercising their roles and responsibilities under the Integrity Act. The GRPA believes that it is essential to maintain independence in interpreting and providing advice on matters under the Act including, but not limited to, conflicts of interest, ethics and integrity issues.

Should some of the Integrity Commissioner's recommendations and/or the issues identified in the Issues Paper be enacted, some increased resourcing of the Commissioner's office may be required.

3.2 Specific Issues

Are there any specific issues that the government needs to consider regarding the operation of the Integrity Act?

The GRPA has responded to a number of specific issues in this submission.

While there has been some recent improvement, the GRPA believes it is essential that Members of Parliament, their staffs and senior Departmental personnel are fully aware of and understand the application of the Integrity Act, the definition of lobbying under the Act and what constitutes a lobbying activity.

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 (such as those that are members of the GRPA) – rather than imposing layers of bureaucracy and administrative requirements on a small section of the lobbying community.

The GRPA presents these additional specific issues which are not covered by questions in the Issues Paper:

3.2.1 Success Fees

The GRPA acknowledges the ban on success fees for registered lobbyists 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 assets sales projects.

The GRPA would expect, upon a broadening of the definition of lobbyists who are captured by the Act, that the ban on success fees is automatically extended to all individuals and entities who lobby, or is removed as a prohibition.

3.2.2 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 formerly 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;**

3.2.3 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.

3.2.4 Disclosure of Information

The GRPA draws the Government'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 could 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.

3.2.5 Public Sector Procedures, Training and Information

While the situation has improved, and the GRPA acknowledges the leadership shown by the Department of Premier and Cabinet and the Integrity Commissioner, GRPA members still regularly report on public servants unwilling to engage with registered lobbyists.

In the GRPA's view (experience) this is a result of either fear, ignorance or inconvenience – or a combination. This issue is a significant and ongoing impediment to the government meeting its commitment to engaging with stakeholders and industry, and to GRPA clients being properly informed and properly heard.

The issue of (public service) inconvenience is addressed in part elsewhere in this submission and relates to the requirement for public service record keeping specifically for contact with a lobbyist.

Another element of inconvenience relates to procedures in some agencies which require senior-level staff (eg Associate Director-General) to approve any contact with a lobbyist. In the GRPA's view, this is a legacy issue which stems from poor guidance to agencies in the early days of lobbyist registration as well as insufficient resources for external auditing and guidance regarding lobbyist arrangements.

The issues of fear and ignorance stem from the way staff have been trained, or not trained. Some public servants simply do not know how to react when a lobbyist calls. It is the experience of GRPA members that some public servants have concluded, from the discriminatory processes in place for third-party lobbyists, that lobbyists are suspect and best avoided. Other public servants have no idea of what constitutes lobbying and therefore treat any contact as lobbying, including simple requests for information.

The GRPA has argued consistently, and again in this submission has sought amendments to the *Integrity Act*, to better define what is <u>not</u> lobbying and therefore assist public servants and Ministers' offices to better understand the Act and their obligations.

Lobbying is not informing or engaging. It is not:

- **Contact and briefings as part of community and stakeholder engagement**
- **Information briefings or updates on projects or business plans – where there is no effort to "influence" a decision**
- **Introductions – eg a new company entering the Queensland market**
- **Market research**
- **Requests to attend events/invitations to boardroom lunches**
- **Attendance at boardroom lunches or events (unless the event is specifically to seek to influence)**

The GRPA has previously offered to the Department of Premier and Cabinet and to the Integrity Commissioner its expert experience and advice (there are hundreds of years of combined experience on the GRPA management committee alone). With the support of the Government, the GRPA could assist through:

- **Professional development and training/information to registered lobbyists – and to the public sector**

- **Development of a guideline for the public sector on what is lobbying and how to work with registered lobbyists**

The GRPA strongly supports the principles espoused in the Queensland Lobbyists Code of Conduct, that:

Free and open access to the institutions of government is a vital element of our democracy.

Professional lobbyists are a legitimate part of, and make a legitimate contribution to, the democratic process by assisting individuals and organisations to communicate their views on matters of public interest to the government, and so improve outcomes for the individual and the community as a whole.

The GRPA argues that, if these principles are to be properly realised, better understanding of the Integrity Act and its rules must be achieved throughout the Queensland public service and in Ministers' offices. The GRPA's proposed professional development program and guideline would help to achieve this goal.

3.3 Annual MP Meetings

Do you think that Members of Parliament should be required to meet with the Integrity Commissioner (at least once a year) to discuss ethics and integrity issues?

It is essential that all Members of Parliament are aware of and understand the intent of the Integrity Act and the definition of lobbying and its application.

Any action that improves the knowledge and application of ethical behaviour is encouraged. On this basis, the GRPA would support a requirement that all MPs meet annually with the Integrity Commissioner.

3.4 Lobbying Provisions

What are your views on how the lobbyist provisions are working in practice? Do you consider that there is a need to further clarify the operation of the Integrity Act in the context of town planners?

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.

Its arguments on this issue have been presented throughout this submission.

3.5 Sanctions

Do you consider the sanctions for lobbyists who breach lobbying provisions are adequate and appropriate?

The GRPA has addressed its support of sanctions in 2.6 above.

The GRPA supports sanctions for a breach of s.71(1): "An entity that is not a registered lobbyist must not carry out a lobbying activity for a third party client". The GRPA further recommends, in accordance with its arguments to extend the definition and application of lobbying to all relevant entities and individuals, that the clause be amended as follows:

s.71(1): An entity that is not a registered lobbyist must not carry out a lobbying activity ~~for a third party client.~~

The GRPA requests that it be directly consulted prior to any proposed changes to sanctions.

3.6 Post-separation

Are the post–separation employment requirements for senior government representatives appropriate?

While this is ultimately a matter for Government to determine, the GRPA notes that this recommendation reflects, in principle, similar rules in other jurisdictions.

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 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 (as per the Commonwealth) 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.

The same in-house person is also eligible for appointment to a government board, whereas, if a registered lobbyist, he or she is not. This is an anomaly which should be rectified.

A further example highlights the difficulties caused by the Integrity Act's broad definition of "former senior government representative" which includes Ministerial staff. The GRPA questions whether this definition (unfairly) applies to someone employed in an administrative capacity in a Ministerial office who seeks to take up an advocacy role with a lobbying consultancy. Because the term "official dealings" is undefined, the GRPA is aware of such former staff who have struggled to determine what they can and can't work on in the private sector. For example, does "official dealing" extend to having taken detailed phone messages for a Minister, or data entry or filing. The GRPA would argue that it does not. Some guidance or more specific definition is warranted.

3.7 Former Senior Government Representatives

Is there any further material required to guide contact between government, the lobbying industry and former senior government representatives?

The GRPA has commented on this issue in 3.2.3.

3.8 Uniformity

Do you consider that nationally uniform lobbying regulations would be appropriate?

The GRPA strongly supports the proposition that some uniformity of regulations and Registers of Lobbyists across jurisdictions must be achieved. This may be possible via a mutual recognition standard. Other suggestions are presented in 3.2 and 3.6 above.

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, the GRPA believes a reasonable solution must be available.

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

3.9 Implementing the Integrity Framework

How can the Queensland Government, local government and the Integrity Commissioner continue to work together to implement the integrity framework under the Integrity Act?

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.

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.

4 Summary

The GRPA appreciates the opportunity to provide the Government with a submission to assist with its review of the *Integrity Act 2009.*

If any additional information or clarification is required, please don't hesitate to contact GRPA President Barton Green.