



15 May 2015

Mr Paul Miller
General Counsel
Department of Premier and Cabinet
GPO Box 5341
SYDNEY 2001

By email: legalmail@dpc.nsw.gov.au

Dear Mr Miller

Regulatory Impact Statement

Lobbying of Government Officials (Lobbyists Code of Conduct) Regulations 2014

Thank you for the opportunity to provide a submission in response to the Regulatory Impact Statement on the *Lobbying of Government Officials Regulation (Lobbyist Code of Conduct) 2014*.

The Australian Professional Government Relations Association (APGRA) broadly supports the NSW Government's recent regulatory reforms, particularly the introduction of a legislative regime and the transfer of compliance monitoring to the NSW Electoral Commission. The APGRA also supports the change to the Code of Conduct to impose ethical standards on all external parties who seek to influence government.

Before expanding on these comments, the APGRA wishes to provide some background on the recent establishment of the Association, the role it will play to support the NSW Government's new regulatory framework, and the wide range of activities undertaken by professional government relations practitioners.

1. Australian Professional Government Relations Association

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

The aims of the Association are to:

- Promote the highest standards of government relations practice in Australia through the establishment and maintenance of a robust industry code of conduct;
- Complement existing regulation of government relations activity in Australia and provide a basis for regular dialogue between government and the profession; and
- Contribute to greater understanding of professional government relations in Australia, and the legitimate and important role the sector plays.

The centrepiece of the Association is a Code of Conduct (**Appendix A**) that regulates the conduct of members and promotes the highest ethical standards in the government relations profession. It

operates alongside the NSW Lobbyists Code of Conduct, and legislation and codes at a federal level and in other states and territories, thereby creating a strong co-regulatory framework to ensure the profession operates in an ethical and transparent manner.

Membership of the Association is open to practitioners across all categories – including consultants, ‘in-house’ practitioners at corporations and peak industry groups - provided they are able to satisfy, and commit to, the Association’s Code of Conduct and Membership Rules. Failure by members to adopt and abide by the Code of Conduct and Membership Rules are grounds for declining or cancelling membership of the Association, or other sanctions deemed appropriate.

During 2015, the Association intends to continue expanding its membership and develop education and induction programs to inform government relations professionals about the Code of Conduct, reinforce expected standards of ethical behaviour and remind practitioners of their professional obligations. It is intended that participation in these programs will become part of the annual member accreditation program.

Further information on the APGRA can be found at www.apgra.com.au.

2. Activities of Professional Government Relations Practitioners

It is important to recognise that the activities undertaken by professional government relations practitioners are substantially broader than ‘lobbying’ or advocacy.

Professional government relations practitioners, whether they act for third parties or are in-house, are involved in a range of activities related to the analysis of public policy, including:

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

The APGRA believes a direct comparison can be made between the advice and assistance government relations practitioners provides organisations and that which is provided by other specialist external or internal advisers. For example, while an organisation can represent itself in court, legal practitioners provide expert judgment and advice on these matters that will assist in furthering the organisation’s interests. Similarly, professional government relations practitioners are engaged to provide judgment, insights and expert advice on public policy and government.

Of course the APGRA recognises that the activity of most interest to the community is lobbying or advocacy given the importance to the integrity of government that such activities are conducted ethically. That is why we support the need for appropriate regulation to ensure appropriate behavioural standards and transparency in interactions with government officials.

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

Indeed, as the Regulatory Impact Statement acknowledges, the Independent Commission Against Corruption's (ICAC) 2010 report on lobbying in NSW found that "there is much evidence that demonstrated that, in general, professional lobbyists act ethically, and that lobbying, when done well, can enhance rather than detract from good decision-making by public officials."

3. Regulatory Options and Selected Approach

The APGRA supports the Regulatory Impact Statement's preferred Option 3 for the new Lobbyists Code of Conduct which imposes enforceable ethical standards on all organisations and individuals who seek to influence government policy and decision making. This reflects the APGRA's Code of Conduct which sets out behavioural standards applying to all categories of member practitioners. The change embodied in the Regulation will address perceptions of a regulatory 'gap' and reinforce to all external parties the need to act at all times with honesty and integrity when dealing with government officials. As the RIS notes, such a change does not impose compliance costs and should be seen as normal ethical behaviour in dealing with governments. In our view it is an appropriate and balanced regulatory approach.

Option 3 largely mirrors the APGRA's binding Code of Conduct, which requires all members - third party and in-house practitioners - to be honest, open and transparent in their dealings with government and clients, and commit to high standards of integrity in conduct of their businesses and activities.

The APGRA believes Option 2 (Registration of all lobbyists) is not consistent with good regulatory practice because it would impose compliance and administrative burdens not proportional to identified risks. Appropriate transparency outcomes are achieved through the arrangements under which third party practitioners are registered and disclose to government representatives on whose behalf they are acting, in combination with the new Ministers' Diary Disclosure system.

The APGRA also believes the Government's recent transfer of responsibility for compliance with the Register of Third-Party Lobbyists and the Lobbyists Code of Conduct to an independent authority with strong administrative capability in the form of the NSW Electoral Commission is a sensible change that will enhance public confidence in the integrity framework.

With regard to enforcement measures under the Code, the APGRA endorses a graduated series of sanctions proportionate to the practitioner's conduct. We accept that removal from the register or placement on the Lobbyist Watch List is entirely justified in the case of findings of corruption or flagrant and/or repeated breaches of the Code. Where there has been a very minor or inadvertent non-compliance, less severe sanctions are more appropriate.

4. Specific Issues of Concern to Consulting Practitioners

There are several issues relating to the Lobbyist Code of Conduct that the APGRA seeks to raise on behalf of its consulting members (i.e. those who are listed under the Register of Third-Party Lobbyists):

- There is some concern as to the breadth of the exclusion under the Code for those from other technical or professional occupations who are currently not required to appear on the Register. Consultants from professional services firm who do not market or brand themselves as professional government relations practitioners may nonetheless advise and advocate to government on behalf of their clients. APGRA's consulting members believe these firms ought to be required to appear on the Register.
- There appear to be informal 'policies' on the part of some Ministers not to engage directly with any parties who are listed on the Register, for no other reason than they appear on the Register. APGRA's consulting members believes this discriminatory practice serves to undermine the standing of the Code and Register system that operates in NSW. While no Minister or public official has an obligation to see any external party, it is not appropriate to exclude an entire category of professionals from dealing with particular government officials.
- While the process for third party consultants to list new clients on the Register has transitioned from a paper-based to an online system, the time taken for changes to be made is of concern. These changes in NSW can take three or four days (and no notification is provided once the listing occurs), whereas it is instantaneous in Queensland and provided within 24 hours at the Federal level.

Thank you again for the opportunity to provide comment. Should the Department of Premier and Cabinet have any queries in relation to this submission or the APGRA more generally, please contact me on 02 8353 0400.

Yours sincerely



Les Timar
President
(CEO and Founding Partner of GRACosway)