



Australian
Professional
Government
Relations
Association

14 October 2022

Senator Linda White
Chair
Joint Select Committee on National Anti-Corruption Commission Legislation
PO Box 6021
Parliament House
Canberra ACT 2600

By email: NACC@aph.gov.au

Dear Chair,

National Anti-Corruption Commission Legislation

The Australian Professional Government Relations Association (APGRA) welcomes the opportunity to provide a submission to the Joint Select Committee on National Anti-Corruption Commission (NACC) Legislation.

APGRA is a professional association for consulting and in-house government relations practitioners around Australia. Our binding Code of Conduct (**Appendix A**) regulates the behaviour of our members and promotes high ethical standards within the government relations profession.

APGRA's members also operate in accordance with the Federal Government's integrity framework, including the Lobbying Code of Conduct and the Foreign Influence Transparency (FIT) Scheme, along with similar codes and legislation in place in other jurisdictions.

APGRA welcomes the establishment of the NACC and is pleased to provide feedback on the legislation from the perspective of professional government relations practitioners. Part of APGRA's mission is to strengthen public confidence in the conduct of government relations practitioners, and we believe the NACC will support our efforts in this regard.

Please do not hesitate to contact me on the details below with any questions about our submission.

Yours sincerely

Feyi Akindoyeni
President
(Partner – SEC Newgate Australia)

Andrew Cox
Secretary
(Partner – GRACosway)

About APGRA

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

APGRA's aims are to:

- Promote high standards of government relations practice in Australia through the establishment and maintenance of a robust industry code of conduct;
- Protect, promote and advance the interests of government relations professionals on all issues affecting or likely to affect the Australian professional government relations industry;
- 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 in a vibrant democratic system.

The centrepiece of APGRA is a **Code of Conduct** that regulates the behaviour of our members and promotes high ethical standards within the government relations profession. The Code operates alongside the Federal Government's lobbying regulatory framework and similar legislation and codes in place around Australia, creating a co-regulatory framework to maintain and further develop professional conduct among government relations practitioners.

Membership of APGRA 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 Code of Conduct and Membership Rules. Failure to do so is grounds for declining or cancelling membership, or applying other sanctions deemed appropriate.

APGRA works closely with governments and regulators across Australia to provide input on lobbying regulation and other matters relevant to our members. We have forged strong and productive relationships with the stakeholders who manage the integrity frameworks in key jurisdictions and regularly act as a sounding board on proposed regulatory changes.

About our profession

Lobbying is a legitimate undertaking in a free and open democratic society. Government relations practitioners play an important role in our representative system of government. Individuals and organisations can and do approach government directly, however some use experts to advise them. Professional government relations practitioners use their knowledge and experience to help corporations, peak bodies, charities and other not-for-profit organisations interact effectively with, and navigate the processes of, government.

Professional government relations practitioners provide their clients with advice and assistance that enhances the flow of information and ideas between government and private companies, industry bodies and the not-for-profit sector. This is not only of benefit to non-government parties but, importantly, can expose government to new ideas and opportunities beneficial to the broader community.

Despite the benefits delivered through professional government relations, 'lobbying' frequently attracts a negative connotation, and is seen by some as a method through which 'big business' inappropriately seeks to influence government for narrow commercial benefit. APGRA rejects the substance of this assertion but accepts that the profession has more work to do to explain and demystify the practice of government relations.

APGRA notes that professional government relations practitioners, whether they act for third parties or are in-house, are typically involved in a range of activities that are substantially broader than simply direct advocacy (which is a common understanding of the term 'lobbying'). Some basic elements of a government relations practitioner's activities include:

- Understanding the business and priorities of the organisation they are advising as well as the specific objectives they may have in an 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 to formulate 'the case' they intend to put forward to government in relation to legislation, a government/parliamentary policy inquiry or another matter. This often involves factoring in 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 and correspondence to government.
- Monitoring ongoing developments in public policy, parliament and the broader public discourse of relevance to the organisation's activities.
- Lobbying or advocacy activities that include coordinating logistical arrangements for government stakeholder meetings on the organisation's behalf and, in many cases, attending these meetings and undertaking relevant follow-up activities.

As this list demonstrates, the work of professional government relations practitioners extends well beyond direct engagement with government.

APGRA views the role of professional government relations practitioners as similar to that of other providers of professional services. APGRA members provide strategic advice to clients, assisting them to assess opportunities and understand and interpret the political landscape. Our members also help their clients – who may not be familiar with government – to understand how government processes and systems work and how they might be able to participate in these processes. This specialist professional advice is similar to that provided by lawyers, accountants and engineers who help their clients to understand and navigate technical processes in different sectors.

Response to NACC legislation

APGRA welcomes the introduction of the *National Anti-Corruption Commission Bill 2022* and the *National Anti-Corruption Commission (Consequential and Transitional Provisions) Bill 2022* (NACC legislation). We support the Federal Government's efforts to address corruption in the Commonwealth public sector and note that the NACC will sit within the broader Commonwealth integrity framework, in which APGRA is highly engaged.

APGRA notes that under the NACC legislation, corrupt conduct is defined to include 'any conduct of a person (including a public official) that adversely affects, or could adversely affect, the honest or impartial exercise or performance of any public official's powers, functions or duties'.¹ Based on this definition, we understand that the conduct of registered lobbyists will be captured by the NACC. APGRA also notes that the NACC Commissioner will be able to investigate 'serious or systemic corrupt conduct and transactions between public officials and third parties, as well as attempts by

¹ Explanatory Memorandum, p. 4

third parties to corrupt public officials'.² APGRA considers that registered lobbyists are 'third parties' for the purpose of this definition.

Noting that the conduct of registered lobbyists will be subject to investigation under the NACC legislation, APGRA welcomes the clarification about lobbying activity provided in the Explanatory Memorandum to the Bill. We note that lobbying a public official on behalf of a client will not be covered by the concept of corrupt conduct 'where nothing in the conduct or the relevant circumstances could be expected to induce or influence a public official to exercise a power dishonestly or partially'.³ As outlined above, APGRA's view is that lobbying is a legitimate undertaking in a free and open democratic society, and we are pleased that the NACC legislation does not seek to curtail lobbying activity that is conducted by registered practitioners in line with the requirements of the Federal Government's integrity framework.

APGRA members are accustomed to engaging with public officials in a highly ethical and transparent way, in line with the obligations set out in the Federal Government's Lobbying Code of Conduct. Among other things, the Code prohibits conduct that is 'corrupt, dishonest or illegal' or that would 'unlawfully cause or threaten any detriment to a person'.⁴ APGRA members are highly focused on complying with the requirements of the Lobbying Code of Conduct, and we are in regular dialogue with officials in the Attorney General's Department (AGD) regarding different aspects of the lobbying regulatory framework. In addition, APGRA's own Code of Conduct sets out a series of expectations and requirements for our members in relation to their engagement with government representatives and compliance with relevant laws and regulations.⁵

APGRA notes that the NACC will also have education and prevention functions. We strongly support efforts to provide education and information about corruption to public officials and the general public. APGRA recommends that the NACC should consider specific education sessions tailored to third parties who regularly interact with public officials in the course of their work, including registered lobbyists. APGRA members have benefited from similar education sessions with AGD officials on the requirements of the Lobbying Code of Conduct. We see these types of learning opportunities as a way for our members to proactively ensure that they understand and comply with the requirements of the Commonwealth integrity framework.

² Explanatory Memorandum, paragraph 2.5, p. 69

³ Explanatory Memorandum, paragraph 2.23, p. 72

⁴ Lobbying Code of Conduct 2022, section 12 <<https://www.ag.gov.au/integrity/publications/lobbying-code-conduct>>

⁵ APGRA Code of Conduct, clauses 20-25 <<https://www.apgra.org.au/wp-content/uploads/2022/05/APGRA-Code-of-Conduct.pdf>>

Appendix A: APGRA Code of Conduct

Introduction

The individual and firm members of the Association believe that government relations practitioners must be honest, open and transparent at all times in their dealings with government and clients, and are committed to high standards of integrity in the conduct of their businesses and activities.

This Code of Conduct has been developed by the Association to clearly articulate the professional and ethical framework for the way in which members relate to government in Australia. Members' primary obligations are to abide by the relevant legislation and government codes in place around Australia. It is intended that this Code will operate alongside those schemes, but in any and all cases of inconsistency, relevant legislation and government codes will prevail to the extent of that inconsistency.

Membership of the Association is open to any firm or person for whom the making of representations to government in Australia constitutes part of their professional activities, and who is prepared to abide by and implement this Code of Conduct and Membership Rules, and continues to comply with them on an ongoing basis.

This Code of Conduct covers the activities of members in their interaction with Australian governments at all levels. Members can include specialist government relations firms and their staff, professional communications firms that also offer government relations support as part of their services, 'in-house' and individual government relations practitioners as well as any other professionals who make representations to government.

It is a pre-requisite and condition of membership of the Association that members adopt and abide by this Code of Conduct, and that all practitioners involved in providing government relations services and making representations to government observe the duties and principles set out in the Code. Members will be required to renew their commitment to the Code each year as a condition of membership.

Failure to adopt and abide by this Code of Conduct and Membership Rules will be grounds for declining or cancelling membership of the Association, or other sanctions deemed appropriate and proportionate.

Definitions

"Consulting Practitioner" means a Government Relations Practitioner who is engaged as a third party to Make Representations on behalf of an individual, a company or an organisation.

"Client" means an individual, association, organisation or business who:

- a) has engaged the Practitioner, or the organisation for whom the Practitioner works, on a professional basis to Make Representations to an Government Representative; or
- b) in relation to an 'in-house' Practitioner, means the Practitioner's employer.

"Executive Role" is any leadership, office-bearer, fundraising or decision making role in a registered political party or associated entity but does not include ordinary membership of a political party.

"Government Institutions" includes Parliament, local government, the ministry, the bureaucracy, and government owned trading organisations.

"Government Relations Practitioner" or **"Practitioner"** is an individual who may be a person, body corporate, unincorporated association, or partnership who Makes Representations.

"Government Representative" means a Government Institution or a person elected to be a member of a Government Institution such as a Member of Parliament or local councillor as well as

their staff, such as Ministerial staff, staff employed by a Member of Parliament, staff employed by a local or shire council, or staff employed in the public sector.

“Lobbying Rules” means rules established by legislation or a Government Institution to regulate lobbying or government relations practitioners or their activities. For an up to date list, see the Association’s website.

“Making Representations” includes substantive contact with a Government Representative for the purpose of influencing government decision-making including making or changing legislation, developing or amending policy or programs, the awarding of a tender, a grant or allocation of funding, and meeting or other requests, but does not include non-substantive matters such as requests for publicly available information or modifying logistical arrangements for a meeting.

“Management Committee” means the Management Committee of the Association or their designate.

Operation of this Code

1. This Code applies in respect of all circumstances in which a Government Relations Practitioner is Making Representations on behalf of a Client.
2. Any breach of this Code of Conduct will be dealt with in accordance with the Membership Rules and it is an obligation of membership that each member (and their relevant staff) is bound by those Rules.
3. This Code commences on 1 July 2014.

Professionalism

4. Practitioners will act with honesty and decency at all times towards Government Representatives.
5. Practitioners will not act in a manner detrimental to the reputation of the Association or the professional practice of government relations in general.
6. Practitioners will not engage in any conduct that is corrupt, dishonest or illegal.
7. Practitioners will use reasonable endeavours to satisfy themselves of the truth or accuracy of all statements made or information provided to Government Representatives and will exercise proper care to avoid giving false or misleading information.
8. Practitioners will diligently advance and advocate their Client’s interest.
9. Practitioners will devote time, attention, and resources to the Client’s interests that are commensurate with Client expectations, agreements, and compensation.

Interactions with Government

10. When interacting with Government Representatives, Practitioners will disclose on whose behalf they are acting, and will not misrepresent their interests.
11. Where the proposed or actual activities of a Client may be illegal, unethical or otherwise contrary to a Lobbying Rule or this Code, Practitioners will advise the Client accordingly and refuse to act in relation to the relevant activity.

12. Practitioners will not make misleading, exaggerated or extravagant claims regarding, or misrepresent, the nature or extent of their access to, or relationship with, Government Representatives, political parties, or members of political parties. This clause extends to claims of 'guaranteed' access to, or outcomes from, particular Government Representatives.
13. Practitioners will not offer or give, or cause a Client to offer or give, any financial or other incentive to any Government Representative that could be construed as a bribe or inducement.

Personal Political Activity

14. Practitioners will keep strictly separate their professional activities and any personal activity or involvement on behalf, or as a member, of a political party.
15. Practitioners will not serve in an Executive Role with a political party.
16. Practitioners will not play a senior management role in the conduct of an election campaign.

Employment of Government Representatives

17. Practitioners will not employ, or otherwise commercially engage, any current Government Representative.
18. Practitioners who were formerly elected Government Representatives will not, for a period of 18 months after they ceased to hold office, Make Representations on behalf of a client, with respect to any matter on which they had official dealings in the 18 months prior to leaving that role.
19. Practitioners, who were formerly non-elected Government Representatives will not, for a period of 12 months after they ceased their former role, Make Representations on behalf of a Client, with respect to any matter on which they had official dealings in the 12 months prior to leaving that role.

Compliance with Laws, Regulations and Rules

20. Practitioners will comply with any relevant Lobbying Rules and with this Code. Where any conflict exists between this Code and a Lobbying Rule, Practitioners must abide by the Lobbying Rule.
21. Practitioners will comply with any legislation, government resolution or rule relating to donations to political parties and any other matter.
22. Practitioners will conduct themselves in accordance with the rules of parliament or any other Institution of Government while within their precincts (including rules relating to any access pass that might have been issued to them).
23. Practitioners will abide by the rules for obtaining, distribution and release of parliamentary and governmental documents.
24. Practitioners will not obtain information from Government Representatives by improper or unlawful means.
25. Practitioners will not cause a Government Representative to breach any law, regulation or rule applicable to them.

Obligations Only Applying to Consulting Practitioners

26. Consulting Practitioners will have a written agreement with their Client regarding the terms and conditions for their services, including the amount of and basis for compensation.
27. The fees charged by a Consulting Practitioner will be reasonable, taking into account the facts and circumstances of the engagement.
28. Upon termination of their relationship, Consulting Practitioners will take steps to the extent reasonably practicable to protect a Client's interests, such as giving reasonable notice to the Client, allowing time for employment of another Practitioner, and surrendering papers and property to which the Client is entitled.
29. Consulting Practitioners will indicate to their Clients their membership of the Association, and the existence of obligations under this Code and the Lobbying Rules.
30. Consulting Practitioners will avoid conflicts of interest in Making Representations on behalf of a Client to a Government Representative.
31. Consulting Practitioners will disclose any known conflict of interest to their relevant Clients and resolve the conflict issue promptly.