

2 August 2023

Mr Greg Melick, AO SC
Chief Commissioner
Integrity Commission, Tasmania
GPO Box 822
HOBART TAS 7001

By email: contact@integrity.tas.gov.au

Dear Chief Commissioner

The Australian Professional Government Relations Association (APGRA) is pleased to provide the following submission to be considered by the Integrity Commission, Tasmania in response to the commission's Framework Report, Model for Reform of Lobbying Oversight in Tasmania (released in June 2023).

As you may recall from our previous communication, the 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.

The 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 the APGRA is a Code of Conduct that regulates the behaviour of members and promotes high ethical standards within the government relations profession. The code operates alongside existing federal, state and territory regulatory frameworks, thereby creating the basis for a co-regulatory framework to maintain and further develop professional conduct. A complete copy of the code can be found at Appendix A.

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

The 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.

This submission should be read in conjunction with our initial submission dated 30 June 2022.

Thank you once again for the opportunity to provide feedback. Should you have any questions about our submission, please do not hesitate to contact the APGRA on the contact details below.

Yours sincerely

Andrew Cox

A handwritten signature in black ink, appearing to read 'Andrew Cox', with a stylized flourish at the end.

**President
Australian Professional Government Relations Association**

APGRA Response – Framework Report, Model for Reform of Lobbying Oversight in Tasmania

Goals of the new model

The APGRA notes the goals of the proposed new model are to:

- Guide ethical conduct by public officials;
- Enhance fairness and transparency in government decision-making; and
- Improve the quality of government decision-making.

The APGRA supports these goals and, in addition, asserts that in any reforms to the regulation of lobbying, the primary consideration should be transparency.

Stakeholder education/training

The APGRA acknowledges the commentary in the framework report that the new system of regulation will require a corresponding education and training program to assist with ensuring that key stakeholders are aware of the changes, how the changes apply to them and how to comply with the changes.

As the APGRA has done in other jurisdictions, the APGRA stands ready to work with the Integrity Commission to educate APGRA members (and non-members) about the changes to the regulation of lobbying in Tasmania. The APGRA is already working with departments and agencies in other states and territories on similar initiatives.

The APGRA holds regular professional development events for government relations practitioners and, subject to further discussions, the APGRA would consider a future professional development event which includes information and/or presentations about the proposed new model in Tasmania.

Definition of a registered lobbyist

The APGRA has analysed the proposed changes to the definition of a registered lobbyist and we have two perspectives on the changes which the commission should consider.

Under the proposed changes, a registered lobbyist would be defined as a person or firm who is paid to conduct lobbying activities on behalf of a third-party client. It is the submission of the APGRA that the reference to payment for lobbying activities should be deleted, so that both paid and unpaid lobbying activities are covered in the definition of registered lobbyist.

The existing regime in Tasmania does not make a distinction between paid and unpaid lobbying activities and other Australian jurisdictions either do not make a distinction or they refer to direct or indirect financial rewards or benefits received in return for lobbying services.

Whether or not a person or organisation is paid for lobbying activities is immaterial – if unpaid lobbying activities were to be left out of the new model, this would be a blind spot in the regulatory regime and therefore, it would increase the risk of non-compliance. Further, if the proposed new wording remains as is, a person or organisation conducting in-kind lobbying activities would not be defined as a registered lobbyist.

The APGRA also notes the proposed new model would broaden the definition of a registered lobbyist such that, if implemented, it would include third-party lobbyists and in-house lobbyists for companies or other entities, with the exception of industry associations, unions and other not-for-profit organisations. The APGRA does not support in-house lobbyists being defined as registered

lobbyists because it is already very transparent about exactly whose interests in-house lobbyists are conducting lobbying activities on behalf of, i.e. the company or other entity they work for.

Definition of a public official (for the purpose of lobbying regulation)

In relation to the proposed new definition of a public official, the APGRA is not opposed to this being broadened (from the existing definition) to include all members of Parliament. However, a loophole still exists in this definition.

To close this loophole, it is the submission of the APGRA that the definition of public official should be further widened to bring Tasmania into line with most other states/territories, which define public officials as all public servants who work for government departments and agencies.

The primary reason for the APGRA's position is that there is a significant amount of contact which takes place between lobbyists and staff who work in government departments and agencies who are not the heads of these departments and agencies. Such contact would not be considered lobbying and therefore, it would be outside of the new regime. This gives rise to the unfortunate situation that a head of a department or agency may have little or no awareness or knowledge about significant lobbying of staff in their department or agency when making important decisions.

Further, the APGRA rejects the following assertions from the commission in the framework report that:

- The risk of a broad definition is that it captures activities within the normal course of the work of a public official; and
- A broader definition will create an unnecessarily low threshold for disclosure that may discourage compliance and be a burden on public officials.

Firstly, it is the within the normal course of the work of a public official to engage with key external stakeholders and in some instances, these stakeholders are represented by lobbyists.

Secondly, the proposed new model would be significantly more effective in promoting transparency and compliance if all department and agency staff were defined as public officials, with a reduced reporting requirement, than restricting defined public officials to being department or agency heads with the increased reporting requirements which are proposed. Not addressing this issue risks maintaining the current loophole where former public servants are in regular communication with their former department or agency colleagues on behalf of third parties, yet this is not defined as lobbying. This is a significant issue in Canberra, in particular.

Gift-giving/benefits

On the proposed ban on gift-giving between lobbyists and public officials – which includes gifts and benefits – the APGRA asserts that such gift-giving is not a widespread practice. Despite this, the terms gifts and benefits are not well defined in the framework report. For example, would this proposed new requirement ban an employee of an ASX-listed company from paying to attend a political party event which is staged by a member of Parliament? Also, would this preclude a registered lobbyist from paying to attend a conference which is convened by a government department or agency?

Given this, the APGRA recommends that this proposed change is deleted until further consultation on it is carried out.

Dual hatting

Consistent with the APGRA Code of Conduct, the APGRA believes that government relations practitioners must not serve in an executive role with a political party or play a senior management role in the conduct of an election campaign.

We believe that the disqualification of an individual who performed a “substantial role” in an election campaign of a political party, ending on the day on which the writ is issued for the first general election after the end of the election period, should be for 1-2 years.

The APGRA also believes this section only applies to the election period and does not take into account individuals who may hold senior roles within the political party executive or provide non-lobbying communications and public relations services to elected members of Parliament outside of election campaign periods. In addition, the proposed new model would still permit a lobbyist who has advised one member of Parliament on an electoral campaign to lobby another member of Parliament from the same political party after the election campaign period.

Therefore, the APGRA recommends that the proposed new model must establish clear boundaries and definitions between persons or firms that provide services lobbying government on behalf of paying or non-paying clients, persons who hold senior roles within political party executives and the provision of non-lobbying of communications and public relations services to elected members of Parliament. To minimise perceived or actual conflicts of interest, there must be clear separation at all times between these three different activities.

Political donations

The APGRA does not support the Integrity Commission, including the Lobbyists Register, being conflated with disclosure requirements for political donations, of which there are already extensive requirements on lobbyists imposed by both the Tasmanian Electoral Commission and the Australian Electoral Commission.

The Integrity Commission’s involvement in disclosure of political donations under the proposed new regime oversteps its current remit and encroaches on the roles of these other state and federal government agencies.

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 a 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.

“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.