

15 September 2023

The Hon. Ann Vanstone KC
Commissioner
Independent Commission Against Corruption
GPO Box 11066
ADELAIDE SOUTH AUSTRALIA 5001

By email: prevention@icac.sa.gov.au

Dear Commissioner

The Australian Professional Government Relations Association (APGRA) is pleased to provide the following submission to be considered by the Independent Commission Against Corruption, South Australia in response to the commission's discussion paper, Lobbying and Influence (released in July 2023).

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.

Thank you 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

A handwritten signature in black ink, consisting of several loops and a trailing line.

Andrew Cox
President
Australian Professional Government Relations Association

APGRA Response – Discussion Paper, Lobbying and Influence, South Australia

South Australia's lobbying regulatory framework

The APGRA continues to support the regulatory framework in place in South Australia which aims to ensure that contact between lobbyists and government representatives is conducted in an ethical and transparent way.

As the national association for professional advisers on government relations in Australia, the APGRA works across the country to engage with governments on behalf of our members. The most recent round of reforms in South Australia (in 2019) in part sought to clarify the intention of regulating lobbying activity, including whether or not in-house government relations practitioners are required to be registered on the South Australian register. This reform process was not without difficulty for a number of stakeholders, particularly the lack of consultation undertaken by the Attorney-General's Department. The APGRA welcomes and encourages further consultation in South Australia in relation to reform and change of lobbying regulation.

Definition of 'lobbying' and 'lobbyist'

The Commission rightly points out that the definition of 'lobbying' and 'lobbyist' is not uniform across Australia. In the vast majority of jurisdictions lobbying activities are defined as communications with a Government representative in an effort to influence Government decision making. While the APGRA believes that definitions contained within the SA Lobbyists Act 2015 and SA Lobbyists Regulations 2016 are appropriate in capturing those who conduct 'lobbying' on behalf of a third party, there is merit in considering further clarification through harmonisation with a useful and widely agreed upon definition in other Australian states and territories. To that end, the definitions prescribed in the Federal Attorney-General's Department administered Lobbying Code of Conduct could be adopted in South Australia. It is also worth noting that South Australia is currently an outlier in that it does not define 'lobbyist' as is the case in other jurisdictions, and it does not have a code of conduct to help industry comply with legislation and regulation. The APGRA argues that a code of conduct is helpful for industry in aiding compliance. The APGRA Code of Conduct is attached at Appendix A.

In the discussion paper the Commission asks if lawyers and accountants who directly offer government relations services should be included in the definition of lobbying. The APGRA is strongly of the view that these individuals should be included – they are clearly offering lobbying services, - in that they are acting on behalf of a third party to influence government decision making - and the principles of transparency should apply, that is, individuals within government should be able to easily understand the ultimate interests being represented. It is for that reason that the APGRA does not support in-house lobbyists being defined as registered lobbyists because it is already inherently 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.

The regulation of the 'lobbied' party

The APGRA agrees in principle that there should be some requirements and regulation of government officials when they are engaging with certain lobbying activities. As the Commission notes, the lobbying of government officials can play a positive role in informing government policies and priorities, and an important role in a democratic society. A number of principles should apply in formulating an appropriate arrangement for establishing regulation of the 'lobbied' party – that is they should be practical, simple to comply with, and be established so as to not have a chilling effect on the willingness or ability of government officials to engage with legitimate non-government stakeholders and interests. Government officials will not engage in the public interest if compliance is overly onerous and time consuming.

Exclusion periods of lobbying

Consistent with the APGRA Code of Conduct, the APGRA believes individuals who work in Government may have access to sensitive information. As such, the Code of Conduct for APGRA members includes post-employment restrictions for elected and non-elected Government Representatives. The Code of Conduct (clauses 19-21) makes it clear that 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. Similarly for practitioners, who were formerly non-elected Government Representatives, they 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.

Consistent with the APGRA Code of Conduct, we also believe that 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.

Harmonisation

As the national association for professional advisers on government relations in Australia, the APGRA navigates lobbying regulatory environments in 9 jurisdictions. The harmonisation of regulatory schemes across Australian jurisdictions is in the interests of the public, government representatives, and lobbyists.

Some of the key challenges that would be addressed through harmonisation would include agreed definitions and compliance obligations, alongside uniform reporting windows. The current inconsistencies make administrative errors more likely to occur for practitioners, particularly those with a national footprint.

The APGRA welcomes any steps South Australia may take to further harmonisation and we would be keen to assist in this process.

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.