

11th March 2011

Dr David Solomon AM
The Integrity Commissioner
PO Box 15290
City East QLD 4002

Via Email: integrity.commissioner@qld.gov.au

Dear Dr Solomon,

Lobbying Reforms: Review of the operation of the lobbying provisions of the Integrity Act 2009 (Chapter 4 of the Act)

Thank you for the opportunity to make a submission in relation to your review of the operation of the lobbying provisions of the Integrity Act 2009 (Chapter 4 of the Act). The Public Relations Institute of Australia ("PRIA") welcomes the opportunity to comment on this important matter.

The PRIA believes that the current Integrity Act and Code of Conduct in place in Queensland provides certainty and transparency to lobbyists and the lobbied. It is simple to operate, affordable and places a shared and reasonable burden on lobbyists and government officers.

The PRIA supports the registration of all third party lobbyists, the declaration and management of conflicting interests and clear guidelines on employment of former government officers.

The PRIA supports the building of a single consistent code and registration regime across the country. Government representatives would also benefit from a 'one-stop-shop' approach to the registration of lobbyists.

We do not support a system which duplicates administrative functions or increases costs to an extent that access to third-party lobbyists is unaffordable for less resourced organisations. Such a system has been proposed by the NSW ICAC and we strenuously urge the Queensland Integrity Commissioner to reject any such proposal.

About the Public Relations Institute of Australia

The PRIA is the national peak body for public relations and communication professionals (including a number of lobbyists) in Australia. The Institute represents and provides professional support and recognition to 3,000 individual practitioners, and more than 180 registered consultancies across all the States and Territories. Government relations and lobbying is a key role for many of our members who work in-house or within communication consultancies.

Many of these consultancies are listed on the state and federal lobbyist registers. In addition, many other corporate and non-for-profit organisations employ PRIA members as in-house lobbyists or government relations professionals.

The PRIA has welcomed the opportunities throughout the past three years to discuss lobbyist registration and will continue to assist the profession to make effective representations to government across federal, state and local jurisdictions. PRIA submissions made to the Federal Government and to the NSW ICAC can be found on the PRIA website at <http://www.pria.com.au/newsadvocacy/advocacy-and-position-statements>.

It is a key goal of the PRIA to enhance awareness of the important role of public relations and its contribution to open, honest and respectful communication as well as to identify and advocate key public policy priorities for the profession.

I have attached in Annex A further information regarding the PRIA. A copy of the PRIA Code of Ethics is at Annex B and Consultancy Code of Practice at Annex C.

General Comments in relation to lobbying and government advocacy

'Lobbyists' perform a legal, legitimate and important role in our democracy; they are engaged in public advocacy on behalf of their clients. They ensure that a wide range of stakeholders have a say in policymaking. They also educate clients on the process of government decision making.

The PRIA suggests that the key issues in any review of lobbying relate to transparency and openness of government decision making, stakeholder engagement, freedom of expression and the democratic right for every citizen to have a voice. The PRIA is strongly committed to both the transparency of representation and transparency of process in relation to public advocacy.

Tools such as the lobbyist register help ensure all parties are aware of representation identity. Clear processes and practices for elected representatives, their staff and public servants are also essential to a well functioning system.

Comments on ICAC Report

1. Conduct of meetings with lobbyists (ICAC Recommendation 2)

In the May 2010 NSW ICAC issues paper¹, it was noted that Queensland public servants reported a high degree of anxiety and uncertainty with respect to the multiple regimes they needed to abide by when receiving representations from the public.

All government groups must publish relevant codes of conduct for Ministers, Members of Parliaments and the full range of government employees and contractors to ensure clarity as to the rules of engagement.

¹ An issues paper on the nature and management of lobbying in NSW (May 2010)

Rules for government contact must not unfairly diminish access to government and the process of decision making. The PRIA is concerned that the NSW ICAC has proposed that there be different rules for accessing government officials, dependent on the employment status of the applicant.

For instance, a CEO of an international bank could meet a government officer over coffee to discuss an issue. But under the ICAC proposals, a third party consultant wanting to have the same discussion on behalf of a small regional credit union would need to request a meeting in writing, the meeting would need to be held in government offices and it would need to be reported by both the government and the third party. Higher levels of government employee or greater number of government staffers may be required to attend such meetings.

Such draconian regulations would discriminate access and restrict freedom of speech for many stakeholders. They may also contribute to government officers being less willing to meet and explore issues due to the increase in red tape that will be required.

2. Reporting contact and activity (ICAC Recommendation 2)

The reporting of contact and meetings must be the responsibility of the government representative or employee; it cannot be outsourced to an external party, such as a lobbyist.

The public sector itself is better structured and resourced to bear the administrative burden of increased reporting requirements for the following reasons:

- Public servants are employees and can be compelled through their employment agreements to report all interactions they have with external stakeholders. They can be compelled to undergo systems training and ensure full compliance with internal reporting requirements and codes of conduct.
- Government relations consultancies are often small businesses. These organisations cannot afford to bear the additional regulatory burden. The additional costs of running a reporting system on behalf of the government could be too much and lead to them foregoing an opportunity to represent their case to government representatives or employees.
- A much worse scenario is that outsourcing could encourage avoidance of reporting.
- Government has an interest in analysing the information and so would have an incentive to collect it.

3. Confidential information and privacy (ICAC Recommendation 5)

The operation of Australia's Freedom of Information Laws can be cumbersome and inconsistent. Any reporting regime must respect the need for privacy, and also understand that some information is confidential – either for valid personal or business reasons.

Secret, un-noted meetings are not appropriate. However, systems must be in place to respect valid confidentiality requirements and matters that are commercial in confidence.

4. Extension of Code/Register to all third-party lobbyists/in-house lobbyists (ICAC Recommendation 8)

Extension of the Code to all third-party lobbyists

Current lobbying registration requirements have created artificial distinctions between third-party 'lobbyists' and 'technical consultants' and specifically in Queensland the conduct of 'incidental lobbying activities.' Lawyers, tax accountants, banking investment advisors and town planners regularly perform third-party 'lobbyist' activities. Any external consultants engaged in the same activity must be subject to the same reporting and regulatory requirements.

Currently unregulated consultants classified as 'technical consultants' are carrying out advocacy activities without transparency or accountability.

Extension of the Code to in-house lobbyists

In-house 'lobbyists' can be found in government relations, public relations, public affairs or corporate affairs roles in multinationals, Australian companies and the not-for-profit sector. Senior lobbyist functions are also performed by directors and senior executives.

The PRIA does not believe, given that it is clear whose interests they represent, that a requirement for in-house lobbyists to be listed on a register would provide any additional transparency of representation. It is the transparency of lobbyists' motivations and position around the table when propositions are being discussed which should be ensured through the disclosure of whom they represent.

Such additional inclusions would be an expensive administrative burden on the government and those organisations, without increasing transparency in any way. If the person contacting a minister works for a Global Bank, or Cancer Council, then it's very clear from their business card, email, telephone number and website who they represent.

5. Sanctions for breaches of the Code (ICAC Recommendation 9)

It is important that there are clearly defined sanctions for breaches of the code and that there is an independent third party appeals process.

Many of the examples of corrupt conduct reported in the Western Australian, Queensland or New South Wales corruption inquiries would not have been averted by tighter regulation of lobbyists. Most of the cases could have been classified as corruption, malfeasance or undue, improper influence. This includes an activity known in the United States as 'influence peddling'.

The OECD defines influence peddling as:

"The illegal practice of using one's influence in government or connections with persons in authority to obtain favours or preferential treatment for another, usually in return for payment."

Influence peddling is a crime in the US, Canada, France, Spain, Portugal, Belgium, Brazil, Argentina and Romania. If the goal is to eliminate the behaviour of influence peddling, we would respectfully submit that further registration is wholly insufficient.

6. Bans on former Ministers and Parliamentary Secretaries undertaking lobbying activities (ICAC Recommendation 11)

The current system of naming individual consultants who are working on government relations programs within Queensland is simple to administer and transparent.

The PRIA suggests that, in addition to current disclosures, government relations practitioners could be required to disclose government positions held currently, or within the past five (5) years.

The PRIA believes that disclosure would serve the public interest more effectively than any ban on 'lobbying' as a profession post-politics.

Disclosure would also serve as a consumer protection measure by ensuring that former political representatives did not make exaggerated or extravagant claims about their political experience. The disclosure could also be made by lobbyists employed in-house, either in disclosures prior to meetings or on their biographies which should be easily visible on their corporate website.

Australians have a right to work. And while there may be some exclusion zones (as evidenced by restraint of trade covenants which recognise from 12-18 months in clearly specified areas), people should still be able to work in their area of choice – this should apply to former political staffers, bureaucrats and government representatives.

PRIA members have expressed concern about unreasonable restrictions that may be placed on their employment of qualified, knowledgeable and experienced professionals.

Where a 'cooling off' period may be warranted (i.e. for ministers and senior public servants), the PRIA recommends it should be:

1. Consistent across federal and state jurisdictions; and
2. In line with Trade Practices Act and accepted practices on restraint of trade for former employees.

PRIA is concerned that in Queensland the ban on former senior government representatives undertaking lobbying activities is two years, whereas federally it is 18 months. The key issue is clarity and certainty.

We urge the Integrity Commissioner to recommend that government make a clear decision that is also consistent across state and federal areas to ensure ease of administration and compliance.

Additional Comments

7. Membership of an Industry Association

Lobbyists are members of a range of professional associations, all with their own membership prerequisites, codes of ethics and continuous professional development requirements.

There are many lobbyists on State and Federal Registers who are members of the PRIA and many of our members also work in-house as government relations professionals. Other lobbyists are lawyers who are typically members of their state or territory law society. Some are town planners who may be members of the Planning Institute Australia and others may be investment bankers, accountants or company directors who belong to different professional institutes.

The PRIA recommends that people on the register be encouraged to join a professional association that can demonstrate it promotes ethical and excellent practice, education and training.

The PRIA recommends that an individual's professional membership should be distinguished on the register. This should be noted by an asterisk or footnote under a clear system of recognising people who belong to a professional association which has a code of ethics, complaints and disciplinary procedures and requires continuing professional development.

8. Professional Education

PRIA recommends that ongoing professional education be a requirement for inclusion on any state or federal lobbyist register. Our experience has shown that the education need of register members varies depending on their level of experience and the diversity of their roles. Thus a range of education programs would be needed.

It would be appropriate to require lobbyists on the register to undertake a short course about the requirements of the codes of conduct, reporting regime and regulatory requirements. The PRIA could also provide courses as part of our professional development programs. The challenge will be to make these courses financially viable given the size of the lobbying industry.

It would be equally appropriate for government representatives and employees to receive training either within government or through an external training organisation.

9. Differing requirements in the State Codes/Registers

Members of the PRIA run major campaigns involving government relations across federal, state and territory jurisdictions. Each jurisdiction has now developed a separate register and code of conduct. This has become quite complex and cumbersome.

The PRIA recommends that the Federal and State governments work towards a consistent code and registration process across the country.

Clear, transparent and simple 'rules of engagement' for external parties engaging with elected representatives, their staff and public servants are also essential. At the moment these vary enormously across different government organisations, employees and elected representatives.

The PRIA recommends all levels of government in Australia negotiate to determine agreed principles that can operate in all jurisdictions. The PRIA further recommends building a single consistent code and registration regime across the country. Government representatives would also benefit from a 'one-stop-shop' approach to the registration of lobbyists and their staff details.

In addition, the different requirements of each state, territory and federal jurisdiction make it extremely difficult to educate practitioners and enforce compliance, especially when running national campaigns.

A single national Register, incorporating the Commonwealth and state and territory registers, would help alleviate the need to register in multiple jurisdictions. This could also be extended to local government organisations.

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The PRIA welcomes the opportunity to be involved in future consultations and would be happy to elaborate on any of the points made in this submission.

Please don't hesitate to contact me on (02) 9331 3346 or jonb@pria.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jon Bisset', with a large, stylized flourish extending from the bottom left.

Jon Bisset
Chief Executive Officer

Annex A – Background information on PRIA

Since 1949, the PRIA has promoted the principles of ethical standards set out in its Code of Ethics and represented public relations practitioners in the best interests of the profession and the wider community.

Continuous professional development

Continuous Professional Development plays a critical role in ensuring high standards of professional practice in the Public Relations and Communication industry in Australia.

PRIA encourages its members to undertake a minimum of 20 hours of appropriate study or related activity per year. All members of the PRIA are required annually to confirm they have met the minimum 20 hours when renewing their membership.

The PRIA Education unit conducts a comprehensive Australia-wide professional development program which offers specific skills in the most in-demand specialist areas. Workshops include strategic planning, change management, government relations and lobbying, public relations writing, media training, professional presentation, digital media and crisis/issues management.

PRIA also conducts regular educational briefings, webinars, luncheons and breakfasts as well as our annual conference where several hundred professionals come together to discuss a wide range of topics in public relations. A specialist leaders forum for our registered consultancy principals is also conducted each year.

Whilst many of our courses and events include topics related to government relations and lobbying, we have recently commenced the development of a suite of Government Relations Training Programs to further enhance the skills and knowledge of our members in this area.

The PRIA has also played a key role in the development of public relations at tertiary institutions around Australia. We conduct a rigorous academic accreditation process to ensure university degrees which prepare practitioners for a vocation in the public relations and communication profession are of a high standard. Currently 45 degrees provided by 17 universities are accredited. Accredited degrees are required to address government relations as a standard part of their program and must have a subject that addresses ethics and legal frameworks.

High ethical standards

All PRIA members are required to make a personal, written commitment to our Code of Ethics. Our Registered Consultancy members are also governed by an additional Code of Practice covering client relations, fees and income and general practice.

All Registered Consultancies are required to ensure that compliance with the PRIA Consultancy Code of Practice and the PRIA Code of Ethics are conditions of employment for all of their practitioners, whether the individuals concerned are PRIA members or not.

The PRIA has a nationally uniform procedure for dealing in a professional, rigorous and fair manner with allegations of breaches of the Code of Ethics. The procedure is made available not only to our members but to all members of the public through our website.

The PRIA Code of Ethics is regularly reviewed, a process that is currently underway with the support of the St James Ethics Centre.

We believe our Codes reflect similar principles to those espoused in the code for registered lobbyists and we are happy to discuss this further at an appropriate time.

Annex B – PRIA Individual code of ethics

PRIA is a professional body serving the interests of its members. PRIA is mindful of the responsibility which public relations professionals owe to the community as well as to their clients and employers.

PRIA requires members to adhere to the highest standards of ethical practice and professional competence. All members are duty-bound to act responsibly and to be accountable for their actions.

The following code of ethics binds all members of the Public Relations Institute of Australia:

1. Members shall deal fairly and honestly with their employers, clients and prospective clients, with their fellow workers including superiors and subordinates, with public officials, the communication media, the general public and with fellow members of PRIA.
2. Members shall avoid conduct or practices likely to bring discredit upon themselves, the Institute, their employers or clients.
3. Members shall not knowingly disseminate false or misleading information and shall take care to avoid doing so inadvertently
4. With the exception of the requirements of Clause 9 members shall safeguard the confidences of both present and former employers and clients, including confidential information about employers' or clients' business affairs, technical methods or processes, except upon the order of a court of competent jurisdiction.
5. No member shall represent conflicting interests nor, without the consent of the parties concerned, represent competing interests.
6. Members shall refrain from proposing or agreeing that their consultancy fees or other remuneration be contingent entirely on the achievement of specified results.
7. Members shall inform their employers or clients if circumstances arise in which their judgment or the disinterested character of their services may be questioned by reason of personal relationships or business or financial interests.
8. Members practicing as consultants shall seek payment only for services specifically commissioned.
9. Members shall be prepared to identify the source of funding of any public communication they initiate or for which they act as a conduit.
10. Members shall, in advertising and marketing their skills and services and in soliciting professional assignments, avoid false, misleading or exaggerated claims and shall refrain from comment or action that may injure the professional reputation, practice or services of a fellow member.
11. Members shall inform the Board of the Institute and/or the relevant State/Territory Council(s) of the Institute of evidence purporting to show that a member has been guilty of, or could be charged with, conduct constituting a breach of this Code.
12. No member shall intentionally injure the professional reputation or practice of another member.
13. Members shall help to improve the general body of knowledge of the profession by exchanging information and experience with fellow members.

14. Members shall act in accord with the aims of the Institute, its regulations and policies.
15. Members shall not misrepresent their status through misuse of title, grading, or the designation FPRIA, MPRIA or APRIA.

Adopted by the Board of Directors on November 5, 2001 and amended on 15 July 2009, this code of ethics supersedes all previous versions.

Annex C – Registered Consultancy code of practice

In addition to PRIA's code of ethics, which binds all individual PRIA members, a Registered Consultancy is bound by the code of practice. The consultancy code of practice binds the principal and all the agency's consultants.

To join PRIA's Registered Consultancies Group, the agency principal in that state/territory must already hold a full PRIA membership (MPRIA) or be a Fellow (FPRIA).

General standards - a Registered Consultancy:

- Accepts a positive duty to observe the highest standards in its business practice and in the practice of public relations; promote the benefits of good public relations practice in all dealings; and improve the general understanding of professional public relations practice.
- Undertakes to observe this code of practice, and any other article or amendment which shall be incorporated into it.
- Adheres to the highest standards of accuracy and truth, avoiding extravagant claims and unfair comparisons and gives credit for ideas and words borrowed from others.
- Must make compliance with this code of practice and PRIA's code of ethics a condition of employment for all its consultants.
- Understands that if it knowingly causes or permits a member of its staff to act in a manner inconsistent with this code it is party to such action and shall itself be deemed to be in breach of it.
- Shall not directly invite any employee of a client advised by the consultancy to consider alternative employment (an advertisement in the press is not considered to be an invitation to a particular person).

Client relations - a Registered Consultancy:

- Safeguards the confidences of both present and former clients. It shall not disclose or use these confidences to the disadvantage or prejudice of such clients or to the financial advantage of the Registered Consultancy, unless the client has released such information for public use, or has given specific permission for its disclosure, except upon the order of a court of law.
- Through its principals and staff collectively or individually, shall not misuse information regarding its clients' business for financial or other gain.
- Shall be free to represent its capabilities and services to any potential client, either on its own initiative or at the behest of the prospective client, provided that in so doing it does not seek to break any existing contract or detract from the reputation or capabilities of any consultancy already serving that client.
- Shall represent competing interests only with the consent of all parties.

Fees and income - a Registered Consultancy:

- Shall not guarantee the achievement of results which are beyond the consultancy's direct capacity to achieve or prevent.
- Shall be free to accept fees, commissions or other valuable considerations from persons other than a client, only provided relevant arrangements are disclosed to the client.

- Shall not knowingly pay fees or give personal commissions which lead to unethical behaviour on the part of others.
- Shall be free to negotiate with clients terms that take into account factors other than hours worked and seniority of staff involved, as long as they do not conflict with PRIA's code of ethics. These special factors have regard to all circumstances of the specific situation and level of service required.
- Shall inform a client of any shareholding or financial interest held by the consultancy or any of its principals, shareholders or employees, in any business whose services it recommends or uses on behalf of a client.
- Shall, at its discretion, seek recompense when detailed creative pitches are required, in which instance copyright of the proposal passes to the prospective client whether or not the consultancy is retained, unless otherwise agreed.