

6 April 2023

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email: pjcis@aph.gov.au

Dear Committee Secretary

Review of the Foreign Influence Transparency Scheme Act 2018

The Australian Professional Government Relations Association (APGRA) welcomes the opportunity to provide a submission to the review of the Foreign Influence Transparency Scheme Act 2018, which is being undertaken by the committee. As the committee is aware, the act established the Foreign Influence Transparency Scheme (FIT Scheme), which commenced in December 2018.

The APGRA is the professional association for consulting and in-house government relations practitioners around Australia. Our 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 integrity frameworks of the federal government and all eight state and territory governments across Australia. At federal government level, this includes:

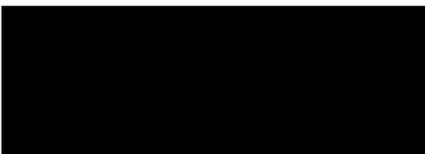
- The Australian Government Register of Lobbyists; and
- The Lobbying Code of Conduct.

At state level in New South Wales, there is a government requirement for third-party lobbyists to disclose to government officials they lobby – before a meeting or communication – details of foreign principals whose interests the lobbyist is representing, including their name and the foreign country or jurisdiction.

The APGRA is pleased to provide feedback on the FIT Scheme from the perspective of professional government relations practitioners. Our submission focuses on the need to raise awareness about the existence of the FIT Scheme and, therefore, compliance levels with the requirements of the scheme, implementation issues directly relating to registering for the scheme and the safety and security of government relations practitioners.

Thank you for the opportunity to provide comment and please do not hesitate to engage with the APGRA via the contact details below in the event that further information is required.

Yours sincerely



Andrew Cox
President
(Partner – GRACosway)



1. About the APGRA

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.

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.

2. Existing lobbying regulatory framework – across Australia

Government relations practitioners across Australia are subject to a rigorous and robust regulatory framework which have different requirements for the nine different governments, i.e. the federal government and the eight state and territory governments.

The APGRA continues to support this regulatory framework, including its aims to ensure that contact between lobbyists and government, opposition and other publicly elected representatives is conducted in an ethical and transparent way. The framework is one of the strongest in the world.

A brief overview of the existing regulatory frameworks that government relations practitioners must comply with across Australia follows.

Federal Government

- [Commonwealth Electoral Act 1918](#);
- [Lobbying Code of Conduct](#);
- [Information for Lobbyists](#), issued by the Attorney-General's Department;
- [The Lobbyist Register](#);
- [Political donations and financial disclosure](#); and
- [FIT Scheme](#).

Queensland Government

- [Electoral Act 1992](#);

- [Electoral and Other Legislation \(Accountability, Integrity and Other Matters\) Amendment Act 2020](#);
- [Lobbyist obligations and Code of Conduct](#);
- [Integrity Act 2009](#);
- [Register of Lobbyists](#);
- [Political donations and financial disclosure](#); and
- [Prohibited donors scheme](#).

New South Wales Government

- [Electoral Act 2017](#);
- [Lobbying Rules](#);
- [Lobbyists Code of Conduct](#);
- [The Lobbyists Register](#);
- [Electoral Funding Act 2018](#);
- [Annual major political donor disclosure](#); and
- [Lobbying representing foreign principals](#).

Australian Capital Territory Government

- [Electoral Act 1992](#);
- [Electoral Regulation 1993](#);
- ACT Lobbying Code of Conduct (which can be found from page 123 of the [Legislative Assembly Standing Orders](#));
- [ACT Register of Lobbyists](#);
- [Registration requirements for lobbyists](#); and
- [Political donations and financial disclosure](#).

Victorian Government

- [Electoral Act 2002](#);
- [Electoral Legislation Amendment Act 2018](#);
- [Victorian Government Professional Lobbyist Code of Conduct](#);
- [Victorian Register of Lobbyists](#);
- [Victorian Public Sector Commission Register of "Government Affairs Directors"](#); and
- [Funding and disclosure information for donors](#).

Tasmanian Government

- [Electoral Act 2004](#);
- [Electoral Amendment Act 2019](#);
- [Tasmanian Government Lobbying Code of Conduct](#);
- [Register of Lobbyists](#); and
- [Integrity Commission Act 2009](#).

South Australian Government

- [Electoral Act 1985](#);
- [Electoral Regulations 2009](#);
- [Lobbyists Act 2015](#);
- [Lobbyists Regulations 2016](#);
- [South Australian Lobbyist Register](#); and
- [Other requirements for lobbyists](#).

Western Australian Government

- [Electoral Act 1907](#);
- [Electoral \(Political Finance\) Regulations 1996](#);
- [Lobbyist Code of Conduct](#);
- [Integrity \(Lobbyists\) Act 2016](#); and
- [Register of Lobbyists](#).

Northern Territory Government

- [Electoral Act 2004](#);
- [Electoral Regulations 2004](#);
- [Financial disclosure for donors](#); and
- [Financial disclosure for third-party campaigners](#).

3. Comments – FIT Scheme

The APGRA is pleased to provide the following comments about the management and operation of the FIT Scheme.

Overview

The APGRA is broadly supportive of the FIT Scheme and the current operation and oversight of the scheme. Similar to the Australian Government Lobbyist Register, the FIT Scheme is meeting its primary objective of providing public visibility to the nature, level and extent of foreign influence on Australia's government and politics.

Compliance with the FIT Scheme

The level of compliance with the requirements of the FIT Scheme among APGRA members is high. This is a result of APGRA members being aware of their obligations under the FIT Scheme and actively ensuring that they comply with these requirements through regular checks and other ongoing methods. In addition, during the period when the FIT Scheme was in its infancy, i.e. in 2018 and 2019, the APGRA was involved in consultation with the Attorney-General's Department about issues relating to the implementation of the scheme and the Association also played in a leading role in assisting with the education of government relations practitioners about their obligations under the scheme. An example of this was the provision of a specific set of briefings for government relations practitioners which was conducted by the APGRA.

While compliance levels among APGRA members are high, the APGRA believes there remains a limited understanding about the existence of the FIT Scheme in the broader business community and the obligations it places on entities undertaking registerable activities on behalf of a foreign principal. The current review is an opportunity for government to increase awareness of these obligations.

In addition, the APGRA remains concerned that there continues to be people carrying out registerable activities who are either unaware of the FIT Scheme and its requirements or they are aware of the FIT Scheme but, in their own words, they feel its requirements are not applicable to the work they are undertaking. Former politicians and former public servants are among the people who most frequently use this rationale for justifying non-compliance (or awareness) of the FIT Scheme. An example of this is a former politician who was conducting legal work for a foreign company who claimed he did not need to register for the FIT Scheme, publicly stating the following: "It's a private company that's not even remotely covered by the Foreign Influence Transparency Scheme and even if it was, lawyers are exempt."

Should there be changes to the FIT Scheme resulting from this review, the APGRA would be pleased to work with representatives from the department to undertake further awareness-raising initiatives for the APGRA's members, to enhance compliance with any new requirements.

In relation to the individual compliance requirements of the FIT Scheme, they are reasonably complex, especially for government relations practitioners who may work on behalf of/for FIT Scheme-registerable organisations relatively infrequently. In this context, it should be taken into consideration that the majority of consulting government relations practitioners in Australia are small and very small businesses (i.e. one-person operations). As mentioned earlier in this submission, government relations practitioners already have a significant compliance burden in

the form of the lobbyist registers which exist at federal government level and in all states and territories, with the exception of the Northern Territory. The Victorian Government (Register of Government Affairs Directors) and the South Australian Government also has requirements for in-house government relations practitioners to register to undertake lobbying activities.

Timeframe for registration

APGRA members are, by and large, well aware of the requirement that if the foreign principal they are working for or on behalf of meets the criteria of an entity which must be registered under the FIT Scheme, they have 14 days from the point where they enter into a commercial relationship with the foreign principal to register under the FIT Scheme. In reality, government relations practitioners usually need to seek registration quickly so that work can commence as soon as possible. Therefore, ensuring the Attorney-General's Department, as well as any other relevant government department or agency, is appropriately resourced to ensure this process takes place as quickly as possible is vital. Given this, the APGRA would support the department being allocated additional resources which are specifically for the purpose of ensuring government relations practitioners are able to register for the FIT Scheme and update information provided under FIT Scheme registration in the fastest and smoothest way possible. This includes ensuring there are adequate resources to enable the department to swiftly respond to technical issues raised by government relations practitioners that prevent or delay FIT Scheme registration or updating of registered FIT Scheme information. This, in turn, would also bolster transparency.

Public disclosure of information

APGRA members have also raised some concerns about the public disclosure of information. While the APGRA remains broadly supportive of the FIT Scheme, the APGRA wishes to ensure that the current review is aware of sensitivities among our members about public disclosure of information.

Specifically, care should be taken to ensure that the Transparency Register, which lists practitioners and the foreign principals they are working on behalf of and/or for, contains the minimum amount of information that both serves the purpose of delivering transparency without compromising the safety and security of practitioners. Such safety and security concerns among our members were heightened by media coverage of their presence on the Transparency Register. The fact that there has been and will continue to be media coverage of listings on the Transparency Register highlights the importance of minimising the amount of publicly available information about practitioners on the Transparency Register and under no circumstances should contact information for government relations practitioners be displayed on this register because of the significant safety and security risks such change would present.

Conclusion

The APGRA would be pleased to provide more detailed information about the matters raised in this submission by meeting with the committee, as appropriate.

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.