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*political regulatory and organisational
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14 April 08

The Secretary
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

Dear Secretary

**EXPOSURE DRAFT – LOBBYING CODE OF CONDUCT
COMMENTS BY BRAMEX PTY LTD - CONSULTANTS**

Thank you for the opportunity to comment on the Exposure Draft of the Lobbying Code of Conduct.

Comments are shown in Annex A to this letter and a marked up version is attached.

Yours sincerely

A handwritten signature in black ink, appearing to read "Mr R Ramsay". The signature is written in a cursive, flowing style.

Ross Ramsay
Managing Director

COMMENTS ON EXPOSURE DRAFT

(See also marked-up version attached)

Section 3 - Definition of Client in 3(a)

Add the words:

“or other payment for representational services”

Reason

Lobbyists often represent clients on a payment basis other than a retainer, for example a time-based fee or a success fee or both.

Section 3 - Definition of Government Representative

Add the words:

“other Statutory Officer”

Reason

Lobbyists often make representations to such appointed persons, who are not necessarily the Head of an Agency, and who are not currently included in the draft list. An example is a Member of a Board of an authority constituted under legislation and whose Board Members are appointed by the Government.

Additionally, it may be appropriate to make the code cover all Members of the Parliament or at least all on the Government side. If so, appropriate words should be added.

Section 3 - Definition of Lobbying Activities

In sub section (b) the same remark as above applies about all Members of the Parliament or at least all on the Government side.

Section 5 – Register of Lobbyists

Amend

By deleting “31 December” and inserting “31 January” or “28 February”

Reason

Dates requiring returns to Government in the peak of the summer holiday period never work, especially ones with a short period for lodgment such as 10 days. Those obliged to make returns are often on holiday and Members of the Public Service receiving them are usually on leave. For example the Australian Taxation Office has recognised this fact and does not require returns for the December quarter until 28 February every year

Section 10 – Registration*Add a subsection 10.4*

If under any of the sub sections 10.1, 10.2 or 10.3 the Secretary decides not to register the name or decides to remove the name of a lobbyist or a person who is an employee of a lobbyist, or a contractor or person engaged by a lobbyist, the Secretary must notify the person of the reason for his or her decision

Reason

Transparency and natural justice require such a notification, especially as a decision may impact substantially on the livelihood of the individuals affected

EXPOSURE DRAFT
LOBBYING CODE OF CONDUCT

APRIL 2008

AMENDMENTS PROPOSED BY ROSS RAMSAY

BRAMEX PTY LTD - CONSULTANTS

LOBBYING CODE OF CONDUCT

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April 2008 i LOBBYING CODE OF CONDUCT

1. PREAMBLE

Respect for the institutions of Government depends to a large extent on public confidence in the integrity of Ministers, their staff and senior Government officials.

Lobbying is a legitimate activity and an important part of the democratic process. Lobbyists can help individuals and organisations communicate their views on matters of public interest to the Government and, in doing so, improve outcomes for the individual and the community as a whole.

In performing this role, there is a public expectation that lobbying activities will be carried out ethically and transparently, and that Government representatives who are approached by lobbyists can establish whose interests they represent so that informed judgments can be made about the outcome they are seeking to achieve.

The *Lobbying Code of Conduct* is intended to promote trust in the integrity of government processes and ensure that contact between lobbyists and Government representatives is conducted in accordance with public expectations of transparency, integrity and honesty.

2. APPLICATION

2.1 The *Lobbying Code of Conduct* applies in conjunction with the Australian Government *Standards of Ministerial Ethics* and other relevant codes.

2.2 The *Lobbying Code of Conduct* creates no obligation on the part of a Government representative to have contact with a particular lobbyist or lobbyists in general.

2.3 The *Lobbying Code of Conduct* does not operate to restrict contact with Government representatives where the law requires a Government representative to take account of the views advanced by a person who may be a lobbyist.

3. DEFINITIONS

"Client", in relation to a lobbyist, means an individual, association, organisation or business who:

(a) has engaged the lobbyist on a retainer or other payment for representational services, or

(b) has, in the previous three months, engaged the lobbyist to make representations to Government representatives, whether paid or unpaid.

"Communications with a Government representative" includes oral, written and electronic communications.

"Government representative" means a Minister, a Parliamentary Secretary, a person employed or engaged by a Minister or a Parliamentary Secretary under the *Members of Parliament (Staff) Act 1984*, an Agency Head, other Statutory Officer or a person employed under the *Public Service Act 1999*, a person engaged as a contractor or consultant by an Australian Government agency whose staff are employed under the *Public Service Act 1999* or a member of the Australian Defence Force.

Deleted: ,

April 2008 1 LOBBYING CODE OF CONDUCT

"Lobbying activities" means communications with a Government representative in an effort to influence Government decision-making, including the making or amendment of legislation, the development or amendment of a Government policy or program, the awarding of a Government contract or grant or the allocation of funding, but does not include:

- (a) communications with a committee of the Parliament
- (b) communications with a Minister or Parliamentary Secretary in his or her capacity as a local Member or Senator in relation to non-ministerial responsibilities
- (c) communications in response to a call for submissions
- (d) petitions or communications of a grassroots campaign nature in an attempt to influence a Government policy or decision
- (e) communications in response to a request for tender
- (f) statements made in a public forum, or
- (g) requests to Government representatives for information.

"Lobbyist" means any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client, but does not include:

- (a) charitable, religious and other organisations or funds that are endorsed as deductible gift recipients
- (b) non-profit associations or organisations constituted to represent the interests of their members that are not endorsed as deductible gift recipients
- (c) individuals making representations on behalf of relatives or friends wishing to inform the Government of their views on matters of public interest
- (d) members of trade delegations visiting Australia
- (e) persons who are registered under an Australian Government scheme regulating the activities of members of that profession, such as registered tax agents, Customs brokers, company auditors and liquidators, provided that their dealings with Government representatives are part of the normal day to day work of people in that profession, and
- (f) members of professions, such as doctors, lawyers or accountants, and other service providers, who make occasional representations to Government on behalf of others in a way that is incidental to the provision to them of their professional or other services. However, if a significant part of the services that the person offers involves lobbying activities on behalf of a client, the person should register.

For the avoidance of doubt, this Code does not apply to any person, company or organisation, or the employees of such company or organisation, engaging in lobbying activities on their own behalf rather than for a client, and does not require any such person, company or organisation to be recorded in the Register of Lobbyists.

"Lobbyist's details" means the information described under clause 5.1.

"Secretary" means the Secretary of the Department of the Prime Minister and Cabinet.

4. NO CONTACT BETWEEN GOVERNMENT REPRESENTATIVES AND UNREGISTERED LOBBYISTS

4.1 A Government representative shall not knowingly and intentionally be a party to lobbying activities by:

- (a) a lobbyist who is not on the Register of Lobbyists
- (b) an employee of a lobbyist, or a contractor or person engaged by a lobbyist to carry out lobbying activities whose name does not appear in the lobbyist's details noted on the Register of Lobbyists in connection with the lobbyist, or
- (c) a lobbyist or an employee of a lobbyist, or a contractor or person engaged by a lobbyist to carry out lobbying activities who, in the opinion of the Government representative, has failed to observe any of the requirements of clause 8.1(e).

5. REGISTER OF LOBBYISTS

5.1 There shall be a Register of Lobbyists that shall contain the following information:

- (a) in the case of a person, company or organisation who conducts lobbying activities, or whose employees conduct lobbying activities on behalf of a client with a Government representative:
 - (i) the business registration details of the lobbyist including, where the business is not a publicly listed company, the names of owners, partners or major shareholders, as applicable
 - (ii) the names and positions of persons employed, contracted or otherwise engaged by the lobbyist to carry out lobbying activities, and
 - (iii) the names of clients on whose behalf the lobbyist conducts lobbying activities.

5.2 A lobbyist wishing to conduct lobbying activities with a Government representative must apply to the Secretary to have his or her lobbyist's details recorded in the Register of Lobbyists.

5.3 The lobbyist shall submit updated lobbyist's details to the Secretary in the event of any change to the lobbyist's details.

5.4 The lobbyist shall provide to the Secretary within 10 business days of 30 June, 30 September and 31 ~~January [or 28 February]~~ of each year, confirmation that the lobbyist's details are up to date.

Deleted: December

5.5 The lobbyist shall provide to the Secretary, within 10 business days of 31 March 2009 and each year thereafter, confirmation that the lobbyist's details are up to date together with statutory declarations for all persons employed, contracted or otherwise engaged by the lobbyist to carry out lobbying activities on behalf of a client, as required under paragraph 10.1.

5.6 The registration of a lobbyist shall lapse if the confirmations and updated statutory declarations are not provided to the Secretary within the time frames specified in clauses 5.4 and 5.5.

6. ACCESS TO THE REGISTER OF LOBBYISTS

6.1 The Register of Lobbyists shall be a public document that is published on the website of the Department of the Prime Minister and Cabinet.

7. PROHIBITION ON LOBBYING ACTIVITIES

7.1 Persons who, after 1 May 2008, retire from office as a Minister or a Parliamentary Secretary, shall not, for a period of 18 months after they cease to hold office, engage in lobbying activities relating to any matter that they had official dealings with in their last 18 months in office.

7.2 Persons who were, after 1 May 2008, employed in the Offices of Ministers or Parliamentary Secretaries under the *Members of Parliament (Staff) Act 1984* at Adviser level and above, members of the Australian Defence Force at Colonel level or above (or equivalent), and Agency Heads or persons employed under the *Public Service Act 1999* in the Senior Executive Service (or equivalent), shall not, for a period of 12 months after they cease their employment, engage in lobbying activities relating to any matter that they had official dealings with in their last 12 months of employment.

8. PRINCIPLES OF ENGAGEMENT WITH GOVERNMENT REPRESENTATIVES

8.1 Lobbyists shall observe the following principles when engaging with Government representatives:

- (a) lobbyists shall not engage in any conduct that is corrupt, dishonest or illegal, or cause or threaten any detriment,
- (b) lobbyists shall use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided by them to clients whom they represent, the wider public and Government representatives,
- (c) lobbyists shall not make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to Government representatives, members of political parties or to any other person,
- (d) lobbyists shall keep strictly separate from their duties and activities as lobbyists any personal activity or involvement on behalf of a political party, and
- (e) when making initial contact with Government representatives with the intention of conducting lobbying activities, lobbyists who are proposing to conduct lobbying activities on behalf of clients must inform the Government representatives:
 - (i) that they are lobbyists or employees of, or contractors or persons engaged by, lobbyists
 - (ii) whether they are currently listed on the Register of Lobbyists
 - (iii) the name of their relevant client or clients, and
 - (iv) the nature of the matters that their clients wish them to raise with Government representatives.

9. REPORTING BREACHES OF THE CODE

9.1 A Government representative who becomes aware of a breach of this Code by a lobbyist shall report details of the breach to the Secretary.

10. REGISTRATION

10.1 The Secretary shall not include on the Register the name of an individual unless the individual provides a statutory declaration to the effect that he or she:

- (a) has never been sentenced to a term of imprisonment of 30 months or more, and
- (b) has not been convicted, as an adult, in the last ten years, of an offence, one element of which involves dishonesty, such as theft or fraud.

10.2 The Secretary may remove a lobbyist or a person who is an employee of a lobbyist, or a contractor or person engaged by a lobbyist from the Register of Lobbyists if, in the opinion of the Secretary:

- (a) the conduct of the lobbyist or of the employee, the contractor or person engaged by the lobbyist to provide lobbying services for the lobbyist has contravened any of the terms of this Code,
- (b) the registration details of the lobbyist are inaccurate,
- (c) the lobbyist fails to answer questions within a reasonable period of time relating to the lobbyist's details on the Register or the lobbyist's lobbying activities (in particular questions relating to allegations of breaches of the Code) or provides inaccurate information in response to those questions, or
- (d) the registration details have not been confirmed in accordance with the requirements of clauses 5.4 and 5.5.

10.3 The Secretary:

- (a) must not register a lobbyist, a person who is an employee of a lobbyist or a contractor or person engaged by a lobbyist if the Cabinet Secretary, in his or her absolute discretion, directs the Secretary not to register the lobbyist or the individual, and
- (b) must remove from the Register a lobbyist or a person who is an employee of a lobbyist or a contractor or person engaged by a lobbyist from the Register if the Cabinet Secretary, in his or her absolute discretion, directs the Secretary to remove the lobbyist or the individual from the Register.

10.4

If under any of the sub sections 10.1, 10.2 or 10.3 the Secretary decides not to register the name or decides to remove the name of a lobbyist or a person who is an employee of a lobbyist, or a contractor or person engaged by a lobbyist, the Secretary must notify the person of the reason for his or her decision.

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