

## Government Relations Australia

mail@govrel.com.au

Level 5, 80 William Street  
East Sydney NSW 2011  
Australia

Telephone 612 9380 5288  
Facsimile 612 9380 5307

Government Relations  
Australia Advisory Pty Limited  
ACN 082 123 822

Les Timar Managing Director  
Hon. John Dawkins AO Director  
Hon. Michael Yabsley Director  
Robin Harris Director  
Scott Gartrell Director  
Peter Phillips Director  
Richard King Director  
Dr. John Tierney Director  
Christian Zahra Director  
Alex Cramb Director  
Sam Moreton Director

16 April 2008

Mr Terry Moran AO  
Secretary  
Department of Prime Minister and Cabinet  
PO Box 6500  
CANBERRA ACT 2600

email: [lobbyistsregister@pmc.gov.au](mailto:lobbyistsregister@pmc.gov.au)

Dear Mr Moran

### **Response to Australian Government's Lobbying Code of Conduct (Exposure Draft)**

Government Relations Australia (GRA) welcomes the opportunity to comment on the Australian Government's Lobbying Code of Conduct and wholeheartedly endorses the propositions set out in the preamble to the Exposure Draft.

#### **1. Introductory Remarks**

GRA believes that the heart of healthy democracies such as ours is a competitive market of ideas. Ideas about how to improve Australia are constantly emerging from within government and from the broader community. These ideas spur innovation and reform. They are the key to a more prosperous economy, healthier communities and a sustainable environment.

As the draft Lobbying Code of Conduct recognises, lobbyists now have a vital role to play in modern democracies. They offer expertise to assist businesses, NGOs and individuals to effectively communicate their ideas to government.

GRA subscribes to the view that professional lobbyists should be held to account for their conduct by adherence to similar standards to those that govern other consulting professions such as lawyers and accountants. The privilege of having access to government and assisting clients seeking to influence government decision-making brings with it professional obligations to act honestly and ethically at every level.

A Lobbying Code of Conduct will codify the principles which the majority of lobbyists in Australia currently observe in their professional activities, and it will also recognise the important role lobbyists play in our democracy.

## 2. Who Are We

Government Relations Australia is a bi-partisan strategic advisory firm specialising in public policy and government affairs across Australia at both Federal and State/Territory government levels. It provides advice and assistance to Australian and international companies and other organisations across a broad range of industry sectors. Established in 1994, GRA highly values its good reputation and operates in an open and honest manner in advising and representing its clients.

In September 1999, GRA's Board of Directors endorsed a Code of Practice to govern the firm's activities. This Code has long been published on our website and as part of the firm's marketing material. It is an expression of the firm's commitment to ethical conduct and the standards it expects of its staff. A copy is attached to this submission.

The firm has also developed a set of Guidelines on Conflict of Interest to manage these issues when they arise.

## 3. Detailed Comments on the Exposure Draft

It is critical to the integrity of government that the interaction with lobbyists is open and transparent – for this reason, GRA endorses the principles and structure of the proposed Code of Conduct. It is also important that the guidelines are fair and equitable in their application and, to this end, GRA wishes to provide its views on several specific provisions of the Code.

### (i) Clause 3: Definition of 'Lobbyist'

The definition of 'lobbyist' under Clause 3 currently means that the Code applies to professional lobbying firms (like GRA) who conduct lobbying activities on behalf of third party clients. In addition, sub-clause (f) of the definition appears to contemplate that where a "significant" part of the services provided by a member of another profession relate to lobbying activities on behalf of third party clients, then that person is covered by the duties and obligations of the Code.

GRA contends that the definition of 'lobbyist' ought to be clarified (in relation to the first category of person below) and expanded (in relation to the second category of person below) such that the Code applies to both:

- Individual professional lobbyists who operate as an employee of, or contractor to, a diversified professional services firm (e.g. major business services firm or law firm), and
- People employed by a company or other for-profit organisation for the predominant purpose of lobbying on behalf of that company or organisation ('in-house commercial lobbyists').

In relation to this first category of person, above, GRA submits that sub-clause (f) ought to specifically nominate for inclusion in the register people who operate under the auspices of a professional services firm and undertake lobbying activities on behalf of that firm's clients. Additionally, it may be helpful to clarify the use of the word "significant" to "significant or regular" for avoidance of doubt.

In relation to the second category of person, above, GRA does not believe there is any public interest in differentiating the professional duties and obligations that ought to apply to those lobbying in relation to commercial objectives and interests. While GRA accepts that the issue of transparency will rarely (but not never) be at issue in relation to the activities of an in-house commercial lobbyist, it is hard to see why the "public expectations of.....integrity and honesty" referred to in the Code's preamble ought not apply equally to these people. The principles of ethical engagement with government representatives must surely be as applicable to in-house commercial lobbyists as they are to the staff of professional lobbying firms.

In addition to this public interest argument, GRA notes that differential disclosure obligations on commercial lobbyists may operate to inappropriately distort the market for professional lobbying services in Australia, such that some companies may choose to procure these services in a way that does not require disclosure. GRA also suggests that it is not unusual for a company and its in-house commercial lobbyist to seek to influence government policy in relation to issues that go beyond the company's own direct interests – for instance, a large investment institution in relation to the interests of companies in which they have invested.

#### **(ii) Clause 10: Registration – Procedures for Removal**

The principles of engagement with government representatives are reasonable and clear. And it follows that anything more than a trivial breach of these principles would result in consideration of a person's removal from the register.

GRA believes that the procedures outlined under sub-clauses 10.2 and 10.3 for non-registration or removal of a lobbyist from the register are flawed in that they abrogate basic principles of natural justice and procedural fairness. These principles underpin widely accepted procedures for review of government decision-making in Australia, and the common law more broadly.

Under sub-clause 10.2, the Secretary may remove a lobbyist from the register without any opportunity for that person to put their case to the Secretary or to appeal such a decision, if the Secretary has formed the opinion that the person has breached the Code (and certain other circumstances). GRA contends that this procedure ought to be modified to provide some form of review process. In the first instance, this might take the form of a notice to be provided to a lobbyist from the Secretary that their registration will be revoked at the end of a certain period of time (say, 14 days) unless just cause is shown to the contrary, including the opportunity for the affected person to be heard by the Secretary or his/her delegate. Should this result in the Secretary deciding to remove the person from the register, the person should have the opportunity to seek a review of the decision by the Cabinet Secretary (or a 'code administrator' - see further, below), including the opportunity to be heard.

Under sub-clause 10.3, the Cabinet Secretary has the power, in his/her absolute discretion, to direct the Secretary not to register, or to remove a lobbyist or person from the register. Again, GRA submits that this provision lacks procedural fairness and ought to be modified. If the primary intention underlying this provision is to ensure that firms or people who do not

meet the criterion of 'fit and proper persons' should not be registered under the Code, then this concept ought to be introduced into the Code and subject to appropriate processes of review.

In GRA's view, the intention underlying both sub-clauses 10.2 and 10.3 and the requirement for procedural fairness could be met by introducing the concept of a 'code administrator'. This code administrator could be an eminent person appointed by the Government and be responsible for the review of decisions under both clauses.

Once again, GRA appreciates the opportunity to comment on the Exposure Draft of this Code. We believe that the promotion of ethical conduct in relation to commercial lobbying activity is desirable from the perspective of the public interest and the professional lobbying industry itself.

GRA would be pleased to discuss any of the issues raised above. Please do not hesitate to contact the undersigned at any time either by telephone (02-9380 5288) or by email ([ltimar@govrel.com.au](mailto:ltimar@govrel.com.au)).

Yours sincerely



**Les Timar**  
Managing Director

## **Attachment: Government Relations Australia – Code of Practice**

As a firm, Government Relations Australia and its staff endorse, adopt and observe the following ethical duties related to government/policy advisory services:

1. TO act in good faith and in an honest manner towards clients and the institutions of government and public bodies and with proper regard to the public interest.
2. TO be satisfied of the honesty and accuracy of any statements made both to clients and to public authorities by or on behalf of clients. Where representations are made or produced by a client, use best endeavours to counsel and secure honesty and accuracy.
3. TO disclose the identity of the client in making representations to public authorities.
4. NOT to withhold information unnecessarily from the institutions of government, subject to normal consideration of commercial confidentiality.
5. TO safeguard the confidence of both present and former clients by not disclosing confidential information to the disadvantage or prejudice of such clients or to the financial advantage of the firm, unless the client has agreed to release such information.
6. TO use best endeavours to pursue client requirements, subject to the obligation to advise clients where objectives may be illegal, unethical or contrary to professional practice and to refuse to act for that client if requested to act in such a manner.
7. TO provide advisory services in an honest manner.
8. NOT to offer, give or cause a client to give any financial incentive (excepting entertainment or token business mementos) to a representative or employee of a parliament or to any public servant; or to receive any incentive that could be reasonably construed as a bribe or solicitation of favour.
9. NOT to appoint any Member of Parliament (MP) to the company board (or to any future advisory board), or pay any retainer or commission to any MP, or person acting on his or her account.
10. TO avoid exploitation of public servants or abuse of the facilities or institutions of government at all levels, and to always behave in accordance with the rules of the relevant parliament.
11. NOT to accept clients or assignments that have directly competing objectives. Where there is a reasonable risk of conflict of interest, the management method will be by way of open disclosure between the parties.
12. NOT to guarantee the achievement of results which are beyond the firm's direct capacity to achieve or prevent.

This Code of Practice has been formally endorsed at a meeting of the Directors of Government Relations Australia.