

6th February 2012

Hon. Colin Barnett MLA
Premier of Western Australia
4th Floor, Governor Stirling Tower,
197 St Georges Terrace
PERTH WA 6000

Via Email: wa-government@dpc.wa.gov.au

Dear Premier,

Integrity (Lobbyists) Bill 2011

I am writing in response to the Integrity (Lobbyist) Bill 2011 ("The Bill") to regulate the lobbying of Government representatives that has recently been introduced into the Parliament of Western Australia. In providing our views, we hope to assist the Western Australian Government with their deliberations.

The Public Relations Institute of Australia ("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. Previous PRIA submissions made to the Federal Government, the Queensland Integrity Commissioner and Queensland Government and to the NSW ICAC can be found on PRIA website at <http://www.pria.com.au/newsadvocacy/advocacy-and-position-statements>.

Whilst some aspects of the Bill represent an improvement on similar legislation that has been progressed federally and in other Australian states, we do have some concerns with certain aspects of the proposed reforms.

PRIA believes that any legislation regulating the lobbying of government representatives must provide certainty and transparency to lobbyists and the lobbied. It must be simple to operate, affordable and place a shared and reasonable burden on lobbyists and government officers.

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.

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. In addition, an agreed terminology across federal and state jurisdictions for the definition of lobbyists and the activity of lobbying is crucial to ease of use and transparency for the many people who operate programs across multiple jurisdictions.

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.

About the Public Relations Institute of Australia

PRIA is the national peak body for public relations and communication professionals (including lobbyists) in Australia. The Institute represents and provides professional support and recognition to 3,000 individual practitioners, and more than 170 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 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. We also have many members who work within Government departments, in local government and as ministerial staff.

It is a key goal of 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 at Annexure A further information regarding the PRIA. A copy of PRIA Code of Ethics is at Annexure B and Consultancy Code of Practice at Annexure 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.

Through their knowledge of both the public policy process and their employer's or client's business, 'Lobbyists' can help to voice divergent views, navigate complex procedures and contribute practical insights into policy implementation and impacts.

PRIA suggests that the key issues in the regulation 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. 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.

In-house lobbyists

PRIA notes that section 9 (f) of the Bill exempts in-house lobbyists from registering. PRIA strongly supports this exclusion.

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.

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.

Additionally, the extension of the requirement to be on the Lobbyists Register to in-house practitioners would significantly increase the size of the register, essentially making it meaningless.

Such additional inclusions would also 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 the Cancer Council, then it's very clear from their business card, email, telephone number and website who they represent.

Nevertheless, in-house and any other lobbyists who are not required to register as an advocate to government should be required to abide by the requirements of any Lobbyists Code of Conduct.

PRIA recommends that there be a requirement added to the Bill that a government representative must not allow themselves to be lobbied by an entity that is not required to register because it is exempt under section 9, unless that entity undertakes to observe the relevant parts of the Lobbyist Code of Conduct in its dealings with the government.

It is noted that this recommendation has also been made by PRIA and the Queensland Integrity Commissioner¹ to the Queensland Review of their *Integrity Act (Qld) 2009*.

Incidental lobbying activities

Lobbying registration requirements in several other jurisdictions have created artificial distinctions between third-party 'lobbyists' and 'technical consultants.'

PRIA notes that section 9 (d) and (e) of the Bill is likely to cause similar issues in Western Australia. Lawyers, tax accountants, banking investment advisors and town planners regularly perform third-party 'lobbyist' activities and are currently carrying out advocacy activities without transparency or accountability. Any external consultants engaged in the same activity must be subject to the same reporting and regulatory requirements.

PRIA recommends that the Western Australian Government considers similar changes to those being proposed by the Queensland Integrity Commissioner to the Queensland Integrity Act (2009) to clarify that "*an entity does not carry out incidental lobbying activities when one of the reasons a client has engaged the entity is for the entity to seek to influence State (or local) government decision-making.*"²

As pointed out by the Queensland Integrity Commissioner this would retain the "incidental lobbying activities" concept while making it a much simpler matter to determine whether it was applicable in a particular case.

Conduct of meetings with lobbyists

In the May 2010 NSW ICAC issues paper³, 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. PRIA has received similar feedback from members in other jurisdictions, including Western Australia.

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.

Rules for government contact must not unfairly diminish access to government and the process of decision making. Unnecessary bureaucracy discriminates access and restricts freedom of speech for many stakeholders. It 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.

Terminology

PRIA strongly supports the new terminology in the Bill to replace "Lobbyists Register" which is currently used in all other jurisdictions.

The term "Register of advocates to Government" is far more appropriate.

¹ Dr Solomon AM, D. (2011). Response to the Integrity Act issues paper, accessed on 16 December 2011, <http://www.premiers.qld.gov.au/publications/categories/reviews/assets/integrity-act-2009-review.pdf>, p. 6 & 7.

² Dr Solomon AM, D. (2011). Response to the Integrity Act issues paper, accessed on 16 December 2011, <http://www.premiers.qld.gov.au/publications/categories/reviews/assets/integrity-act-2009-review.pdf>, p. 9-11.

³ An issues paper on the nature and management of lobbying in NSW (May 2010), accessed on 16 December 2011. http://www.icac.nsw.gov.au/documents/doc_download/3524-lobbying-in-nsw-an-issues-paper-on-the-nature-and-management-of-lobbying-in-nsw.

Members of Parliament

Section 3 of the Bill defines “government representative” to exclude all Members of Parliament other than the Premier, Ministers and Parliamentary Secretaries. As a consequence of these definitions the lobbying of backbench government MPs and of all opposition and independent MPs is not lobbying for the purposes of the Act, even though such lobbying may in fact influence the making or amendment of legislation.

There is a clear public interest in regulating the lobbying of all Members of Parliament rather than, as the case at present, limiting that regulation to contact with Executive Government.

Post-separation employment requirements for senior government representatives

PRIA recommends that government relations practitioners could be required to disclose government positions held currently, or within the past five (5) years.

This disclosure would serve the public interest more effectively than any ban on ‘lobbying’ as a profession post-politics.

Disclosure also serves as a consumer protection measure by ensuring that former political representatives do 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), 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 different jurisdictions have different requirements in relation to the ban on former senior government representatives undertaking lobbying activities. The key issue is clarity and certainty.

We urge the Western Australian Government to make a clear decision that is also consistent across state and federal areas to ensure ease of administration and compliance.

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 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.

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.

PRIA recommends that an individual's professional membership should be distinguished on the register. This is currently the case in Queensland. 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.

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 educational 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. PRIA could also provide courses as part of our professional development programs.

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

Nationally uniform lobbying regulations

Members of 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.

PRIA recommends that the Federal and State governments work towards a consistent code and registration process across the country. Where this may not yet be possible we implore you to have consistent definitions and terminology.

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.

PRIA recommends all levels of government in Australia negotiate to determine agreed principles that can operate in all jurisdictions. 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.

Reporting contact and activity

The reporting of contact and meetings must continue to 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.

Confidential information and privacy

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.

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.

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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 jon.bisset@pria.com.au

Yours sincerely,



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Annexure A – Background information on PRIA

Since 1949, 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 PRIA are required annually to confirm they have met the minimum 20 hours when renewing their membership.

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.

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 PRIA Consultancy Code of Practice and PRIA Code of Ethics are conditions of employment for all of their practitioners, whether the individuals concerned are PRIA members or not.

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.

Annexure 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.

Annexure 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.