

**Submission
No 5**

INQUIRY INTO MINISTERIAL PROPRIETY IN NEW SOUTH WALES

Organisation: Public Relations Institute of Australia

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The Hon Robert Borsak MLC, Chair
Select Committee on Ministerial Propriety in New South Wales

Hon Mr Borsak,

Thank you for the opportunity to make a submission to the inquiry on Ministerial Propriety, the Public Relations Institute of Australia (PRIA) welcomes the opportunity to comment on this important matter. Our submission will focus on the operation of the NSW Lobbying Code of Conduct, the Lobbyist Register and related matters (Terms of Reference C, D and E), which are the areas where we believe that the PRIA is best positioned to provide useful insights. We will also provide some general suggestions on maintaining and improving the equity of access for all citizens.

PRIA believes that any legislation regulating the lobbying of government representatives must provide certainty and transparency to lobbyists and the lobbied. We support continuing with a Lobbyist Code of Conduct, and believe that the Lobbyist Register works as a list that identifies third parties being represented by the registered lobbyists.

Any regulation of lobbying or lobbyists cannot be seen as functional if it only address the activities of one small group of lobbyists, and ignores the many other people who wish to discuss ideas, opportunities or issues with our elected representatives in general, or ministers in particular.

PRIA proposes that all third party lobbyists must be registered, including lawyers, accountants, technical advisors and non-executive directors. We also support the declaration and management of interest conflicts, as well as clear guidelines on the use of former government officers (including ministerial staff and senior public servants).

PRIA also supports the building of a single consistent code and registration regime across Australia. Government representatives would benefit from the convenience and simplicity offered by a 'one-stop-shop' approach to the registration of lobbyists. As part of this harmonisation, agreed terminology across federal and state jurisdictions for the definition of lobbyists and the activity of lobbying will be crucial for the transparency and ease of use by the many people who operate programs across multiple jurisdictions.

Clear processes and practices for elected representatives, their staff and public servants are essential to a well-functioning system.

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. This would in effect silence a majority of the community, and result in inferior policy outcomes.

Having an open, accessible and transparent government decision making system depends on the ability to consider a range of views, some of which may need assistance in being heard and understood.

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About the Public Relations Institute of Australia

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, continuing education and recognition to 1,500 individual practitioners and more than 80 registered consultancies in NSW.

A number of the NSW PRIA Registered Consultancies are listed on the NSW lobbyist registers. The PRIA Registered Consultancies Group is the only professional body in NSW representing collective interests and able to provide public affairs and advocacy education and advice.

Government relations and lobbying is a key activity for some of our members who work in-house or within communication consultancies. On the other hand, a significant number of our members will occasionally contact government but only as an incidental activity or a component of a broad corporate affairs and communication activity.

Amongst the PRIA members who engage in regular lobbying some are employed in-house by corporate and not-for-profit (NFP) as lobbyists or government relations professionals. We also have many members who work within Government departments, in local government and as staff for elected state representatives.

For the past three years PRIA has taken up all opportunities to contribute to the discussions of lobbyist registration, and will continue assisting the profession to make effective representations to government across federal, state/territory and local jurisdictions. Previous PRIA submissions made to the Federal Government, the Queensland Integrity Commissioner and Queensland Government, to the Western Australian Government and the NSW Independent Commission Against Corruption (ICAC) can be found on PRIA website at <http://www.pria.com.au/newsadvocacy/advocacy-and-position-statements>.

It is a key goal of PRIA to improve awareness of the important role played by advocacy and communication and their contribution to building open, honest and respectful community and workplace relationships.

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.

Lobbying and advocacy – helping to maintain the democracy of voices

The activity of 'lobbying' can be said to broadly refer to the actions of groups or individuals seeking to contribute to the formulation of policy and decision making by elected or appointed government officials.

'Lobbyists' perform a lawful, legitimate and important role in our democracy - they are engaged in public advocacy on behalf of their clients. Many lobbyists do not have party affiliations.

Many of those advocating ideas or proposals to government representatives do not have a background as former ministers or elected parliamentarians.

Majority of those who have drawn media attention to lobbying activities are not covered by the current regulations and are not on the lobbyist register (nor are they required to be under the current narrow rules).

Lobbyists ensure that a wide range of stakeholders are able to "have a say" in policymaking and government decisions. They also have an important role to play in educating clients on the process of government decision making.

Through their knowledge of both the policy development and delivery process and their employer's or client's business or community's concerns, lobbyists can help to voice divergent views, help 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 can help to ensure that all parties are aware of the identity of those making a representation.

Lobbying is not exclusively used by those with substantial economic influence. Lobbying is done on behalf of community and commercial organisations that have a legitimate contribution to make to the policy and legislative process.

Nor does a lobbyist register of third-party consultants necessarily improve the transparency of government decision making. Such transparency will only be achieved by reporting of ministerial meetings and activities with all parties, including in-house and sector representatives.

The lobbyist register serves to identify representation of third parties. A review of recent case studies shows that decision making by government representatives is often influenced by people who will never appear on any lobbyist register for third parties.

We therefore would urge the Select Committee to focus on the key areas of impact, which are outlined below.

In-house vs. Consultants

Lobbyists can be primarily divided into consultants who are engaged by organisations for specific projects or in an ongoing contracted advisory capacity, and in-house lobbyists who are directly employed by their clients.

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

PRIA notes that in-house lobbyists are currently exempt from the lobbyist register in NSW. PRIA strongly supports this exclusion, provided that the key function of the register is solely to identify interests represented by the lobbyist. In-house, NFP and peak body representatives have clearly identified interests, following a disclosure of their employer.

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. Disclosure of their employer and position should be sufficient transparency of their motivations.

Whether the person contacting a minister works for a bank or the Cancer Council, it is very clear whom they represent from their business card, email, telephone directory and website.

Nevertheless, it is essential that in-house and any other lobbyists who are not required to register should still be required to abide by relevant requirements of any Lobbyists Code of Conduct.

It has been reported by members of the PRIA that many NSW government ministerial staff are highly proficient at checking registration prior to accepting correspondence or scheduling meetings.

However, some third-party organisations have reported anecdotal experience that open and transparent approaches to some ministerial offices by properly registered consultants have been rebuffed, due to those offices not being proficient or sufficiently educated in the use of the Register.

Discouraging third-party consultants, who are compliant with the Code of Conduct and Register, from openly approaching government on behalf of organisations that may not have the resources for in-house advocacy, is highly detrimental to democratic participation and political equity. It could also encourage some organisations to by-pass proper registration processes when asking for meetings with government representatives or to employ casual staff in order to by-pass registration requirements.

PRIA recommends that there be a requirement added to the section 4.1 of the current NSW Lobbyist Code of Conduct that a government representative must not allow themselves to be lobbied by an entity (including those exempt under section 3), unless that entity undertakes to observe all of the relevant parts of the Lobbyist Code of Conduct in its dealings with the government.

Technical consultants are lobbyists

Lobbying registration requirements in several jurisdictions, including NSW, have created artificial distinctions between third-party 'lobbyists' and 'technical consultants'. PRIA notes that section 3(c) of the NSW Lobbyist Code of Conduct causes similar issues.

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 Select Committee 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."*¹

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.

We would also recommend that any 'technical consultants' that are carrying out lobbying activities also be made subject to registration requirements.

¹ Dr Solomon AM, D. (2011). Response to the Integrity Act issues paper, accessed on 3 October 2013, <http://www.premiers.qld.gov.au/publications/categories/reviews/assets/integrity-act-2009-review.pdf>. p. 6.

Post-separation employment and lobbying rules for senior government representatives

The 2011 NSW Department of Premier and Cabinet's Code of Conduct for Ministers of the Crown² advises former Ministers to obtain advice from the Parliamentary Ethics Adviser in respect of post-separation employment or engagement for the period of 18 months following the former Ministers' ceasing to hold Ministerial office.

The *Lobbying of Government Officials Act 2011* also imposes additional restrictions on a former Minister's capacity to engage in lobbying activities in the first 18 months after leaving office that concern his or her former portfolio responsibilities in the 18 months prior to leaving office.

The Act makes it a criminal offence for a former Minister or Parliamentary Secretary to engage in certain lobbying activities in the 18 months after leaving public office.

PRIA recommends that the NSW Lobbying Register and Code of Conduct provisions are made consistent with the Federal Lobbying Code of Conduct. The Code states that "Persons who were employed in the Offices of Ministers or Parliamentary Secretaries under the *Members of Parliament (Staff) Act 1984* at Adviser level and above ... 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"³.

PRIA is concerned that different jurisdictions have different requirements in relation to the ban on former senior government representatives undertaking lobbying activities – with key issue revolving around clarity and certainty. This approach would also ensure ease of administration and compliance.

²NSW Code of Conduct for Ministers of the Crown, Department of Premier and Cabinet, accessed on 3 October 2013
http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0011/121421/Ministerial_Code_of_Conduct_June_2011.pdf

³ Lobbying Code of Conduct, Department of the Prime Minister and Cabinet, accessed on 3 October 2013
http://lobbyists.pmc.gov.au/conduct_code.cfm

Membership of an Industry Association

Some of the lobbyists are members of various 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. Many of the 'technical consultants' who lobby are lawyers, and are typically members of their state or territory law society.

Others 'technical consultants' may be town planners, who may be members of the Planning Institute Australia; while others may be investment bankers, accountants or company directors who belong to different professional institutes.

PRIA recommends that registered lobbyists be encouraged to join a professional association that can demonstrate it promotes ethical and excellent practice, education and training.

We believe that an individual's professional membership should also be clearly distinguished on the Register (this has been partially implemented in Queensland⁴). The professional membership could be noted by a symbol (hash or star), creating a clear system of recognition for people who belong to a professional association with a code of ethics, complaints and disciplinary procedures and a continuing professional development requirement.

Professional Education

Lobbyists by and large have very few opportunities for continuing education, and even fewer for the development of professional credentials. For most professions, ongoing training and education is seen as necessary and even compulsory part of maintaining their professional credentials.

There is currently no embedded process for ensuring that all lobbyists, even those on the register, have an opportunity to develop a full understanding of the requirements and obligations associated with government advocacy. There is also a lack of a well-established process for communicating changes to the Code of Conduct, Register or related matters to the wider profession.

⁴ Queensland Register of Lobbyists, Queensland Integrity Commissioner, accessed on 3 October 2013
<http://lobbyists.integrity.qld.gov.au/who-is-on-the-register.aspx>

PRIA recommends that ongoing professional education be a requirement for inclusion on the NSW Register. Our experience has shown that the educational need of registered members varies depending on their level of experience and the diversity of their roles. Thus a range of education programs would be needed to cater for the various participants.

It would be appropriate to require lobbyists on the register to undertake a short course covering the requirements of the codes of conduct, reporting regime and regulatory requirements. PRIA would be willing to provide such courses as part of our professional development programs.

It would be equally appropriate for government representatives and employees to receive appropriate training that assists them in dealing with lobbyists from all employment situations, and to ensure appropriate record keeping is maintained. This training could be delivered within government or through an external training organisation.

Nationally uniform lobbying regulations

Members of PRIA administer major advocacy and public affairs campaigns, which can involve government relations across federal, and multiple state and territory jurisdictions. Each jurisdiction has developed, or is in the process of developing, a distinct lobbying register and code of conduct. This disconnected approach has become quite complex and cumbersome.

Clear, transparent and simple 'rules of engagement' for external parties engaging with elected representatives, their staff and public servants are essential. These currently vary enormously across different government organisations, employees and elected representatives, which adds to the challenge of engaging the NSW Government in a conversation.

PRIA recommends that NSW work with the federal Government and the other state and territory governments, in order to arrive at a consistent code and registration process. Where this may be a long-term goal, we would encourage the NSW Government to at least explore the possibility of using consistent definitions and terminology across all jurisdictions.

Government representatives would also benefit from a 'one-stop-shop' approach to the registration of lobbyists and their staff details.

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

Reporting

Reporting is crucial to ensure that all people providing information and ideas to government representatives are equally reviewed. The public sector is clearly better structured and resourced to bear the administrative burden of reporting requirements for advocacy contacts and meetings for a myriad of reasons, such as:

- 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, and cannot afford the weight of additional regulatory burdens. The additional costs of small businesses being forced to run a reporting system on behalf of government would be too onerous and could preclude some from pursuing advocacy on behalf of community and NFP organisations.
- Placing the responsibility for reporting with government representatives allows for existing systems of disclosure and Freedom of Information to be used.

PRIA recommends that reporting of contact and meetings between government representatives and lobbyists must be the responsibility of the government representative or employee - it cannot be outsourced to an external party, such as a lobbyist.

We believe that transparency should be enforced through the reporting of contacts and meetings – secret and un-noted meetings are not appropriate. However, there still must be systems in place to respect valid confidentiality requirements and matters that are commercial in confidence.

The operation of the Freedom of Information laws can be occasionally cumbersome and inconsistent. Any reporting regime needs to respect the need for privacy, while still understanding that some information needs to remain confidential – for valid personal or business reasons.

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Public Relations
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New South Wales

PRIA would welcome the opportunity to be involved in future consultations, and would be happy to elaborate on any of the points made in this submission. Please do not hesitate to get in touch with the contact person for this submission, Annabelle Warren.

Yours sincerely,

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President, Public Relations Institute of Australia

Annabelle Warren
National Chairman of the PRIA Registered Consultancies Group

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 practising 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.

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.

General standards - a Registered Consultancy:

1. 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.
2. Undertakes to observe this code of practice, and any other article or amendment which shall be incorporated into it.
3. Accepts a positive duty to observe the highest standards of public relations; promote the benefits of good public relations practice in all its dealings; and improve the general understanding of professional public relations practice.
4. 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.

Employees - a Registered Consultancy:

1. Makes compliance with this Code of Practice and the PRIA Code of Ethics a condition for all its consultants.
2. Understands that if it knowingly causes or permits a member of its staff to act in a manner inconsistent with the Code it is party to such action and shall itself be deemed to be in breach of it.
3. Shall not directly invite any employee of a client advised by consultancy to consider alternative employment (an advertisement in the press is not considered to be an invitation to any particular person).

Client relations - a Registered Consultancy:

1. 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.

2. Through its principals and staff collectively or individually, shall not misuse information regarding its clients' business for financial or other gain.
3. Shall be free to represent its capabilities and services to any potential client, either on its own initiative or at the bequest 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.
4. Shall represent competing interests only with the consent of all parties.

Fees and income - a Registered Consultancy:

1. Shall not guarantee the achievement of results which are beyond the consultancy's direct capacity to achieve or prevent.
2. 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.
3. Shall not knowingly pay fees or give personal commissions which lead to unethical behaviour on the part of others.
4. 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.
5. 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.
6. 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.