

**Submission
No 3**

INQUIRY INTO MINISTERIAL PROPRIETY IN NEW SOUTH WALES

Organisation: Joint submission: Government Relations Australia, Kreab Gavin
Anderson and Newgate Communications

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The Director
Select Committee on Ministerial Propriety in New South Wales
Parliament House
Macquarie St
Sydney NSW 2000

Dear Sir/Madam

**Joint Submission to the Legislative Council Select Committee on Ministerial Propriety in
New South Wales**

We appreciate the opportunity to provide a submission in relation to the Select Committee's inquiry into Ministerial Propriety in New South Wales.

In this submission, Government Relations Australia (GRA), Kreab Gavin Anderson and Newgate have set out a combined view on the operation and overall effectiveness of the *Lobbying of Government Officials Act 2011* ('Act'), and the associated Lobbyist Code of Conduct ('Code').

1. Who Are We

GRA, Kreab Gavin Anderson and Newgate are led by senior government relations practitioners with longstanding experience in the sector. The firms share a range of views on issues of lobbying regulation in NSW and other Australian jurisdictions and have therefore come together for the purpose of making this submission to the Select Committee. Each of the firms and our senior staff highly value the reputation we have developed over many years and operate in an open and honest manner in advising and representing clients. Our firms operate on a 'non-partisan' basis in the sense that senior staff do not seek to play a role as participants in the political process.

GRA is a bipartisan strategic advisory firm specialising in public policy and government affairs across Australia at both federal and state/territory government levels. Established in 1994, GRA provides advice and assistance to Australian and international companies, industry associations and not-for-profit organisations across a broad range of industry sectors. GRA draws together a senior professional team with a variety of experience in the areas of public policy, business, and elsewhere via a network of offices in Sydney, Melbourne, Brisbane, Canberra, Adelaide and Perth (GRA Everingham).

With more than four decades of experience in strategic communications, Kreab Gavin Anderson has played an integral part in shaping the business landscape as we know it today. As public affairs advisors and financial communicators we can identify issues and find solutions that facilitate better decision making, allowing our clients to operate to the best of their ability. We offer tailored solutions to our clients' unique issues, because it is our firm belief that each company or organisation faces distinct communication challenges. A global agency, the firm has offices in the Australian capitals of Sydney, Canberra, Melbourne, Perth, and Brisbane.

Newgate Australia is a new organisation formed by bringing together the country's most experienced team in public affairs, corporate and government relations, financial communication, stakeholder and community engagement and market research. Part of a newly established global communications firm, Newgate Australia operates out of offices in Sydney, Melbourne, Canberra and Brisbane with affiliates in other capitals. With a strong research based methodology, Newgate is a bipartisan firm and works extensively for corporations, public agencies and not for profit organisations.

2. Effectiveness of the Code

It is our view that the following key principles underpinning the current regulatory framework for lobbying in NSW are both sound and appropriate:

- Lobbying is a legitimate and valuable part of the democratic process, the development and implementation of policy, regulation and legislation;
- At the heart of our system of government is the right of citizens, corporations and other organisations to put their point of view and to hold government accountable;
- It is beneficial for government that there is free and open exchange between the public and private sectors. There is value for the administration of government to be able to access alternative perspectives and sources of information;
- It is important that there is transparency in relation to the interests that are being represented to government officials;
- There is a set of ethical behaviours that should apply in interactions with government officials.

In our view, the efficacy of the Code ought to be assessed against the public policy objectives it was established to achieve. Fundamentally, there are two aims underpinning the provisions of the Code: maximising compliance with basic ethical standards for those making representations to government; and, secondly, transparency in relation to the identity of a client on whose behalf a consultant makes representations to a government official.

We believe the experience of the last four years since the introduction of the Code and associated Register establish the proposition that this regulatory framework has been highly effective in achieving its objectives. In our experience, the obligations of the Code are taken very seriously by government relations practitioners and government officials in terms of ethical standards as well as compliance with disclosure obligations.

While ever the Code applies only to the category of professional government relations practitioners who are engaged by third party clients to assist in their representations to government, we believe this is a sound approach given that one of its central objectives is to ensure that government representatives clearly understand on whose behalf representations are being made.

The existing approach in NSW largely mirrors other jurisdictions, with some variation, and it is our view that it is an appropriate and balanced regulatory approach to government relations. From our firms' experience over the last four years, the compliance burden associated with the NSW Register (and its counterparts in other jurisdictions) is significant but manageable, and the management of the Register by the Department of Premier and Cabinet is undertaken efficiently and effectively. We believe that there is a risk that any moves to increase the regulatory burden may only serve to increase the workload and costs for practitioners with negligible beneficial outcome. Moreover, the addition processes and costs this could create for government and government agencies could be quite significant.

We do, however, support the changes made in September 2013 regarding the prohibition of a registered lobbyist to occupy or act in an office or position concerned with the management of a registered political party – this modification has strengthened the regulatory framework and will enhance the perception and standing of the government relations profession.

3. Sanctions Under the Code

It is an important and proper issue to consider sanctions under the Code. The only sanction specifically provided is deregistration which, we contend, is the most serious penalty as it would effectively deprive a practitioner of their ability to operate. While there are circumstances where such a sanction would be justified (such as a finding of corruption, flagrant and repeated breach of the Code etc.), it would be appropriate to specifically provide for a graduated series of sanctions which would be proportionate to the practitioner's conduct. This could include, for example, the issuance of a warning, or the requirement for some form of corrective action.

In the case of former Ministers and Parliamentary Secretaries, Members of Parliament and other professionals (including but not limited to legal, accounting or banking firms) who may be engaging in lobbying activities for third parties but are not registered, it is our view that mechanisms should be developed to deal with these circumstances. These mechanisms could include formal instructions to Ministers, their offices and departments from the Department of Premier & Cabinet (DPC) ensuring there are no dealings with such people and/or a legislative prohibition until such time as they are registered.

4. Additional Considerations

Coverage of Government Relations Practitioners

(a) In-house government relations practitioners

The current regulatory arrangements do not apply to in-house government relations practitioners, either in corporations or industry/interest groups, even though individuals in these categories almost certainly represent a majority of those seeking to influence the policy-making process. There is no intrinsic difference between the activities of in-house practitioners vis a vis consulting practitioners, except that they are not advising and assisting third parties. While we believe there is probably no inherent benefit in formally registering these practitioners per se, we think one area of improvement would be to modify the Code such that all parties seeking to interact with government clearly understand that its basic ethical standards also apply to them.

That said, if the objectives underpinning the Code were to change and expand, it is our view that the Code would also require amendment to include in-house government relations practitioners. This would avoid the imbalanced and illogical situation where a significant level of regulation would apply solely to the smaller part of the sector while no rules apply to the majority of practitioners. In this circumstance, it must be the case that effective regulation would require consistency of application to all practitioners.

(b) Third party professional service providers

It is our view that consideration should be given to the Code more clearly defining the coverage of other third party professional service providers - such as lawyers, those working at accounting/business services firms, and a wide range of other consultants (eg. management, environmental and planning consultants). Under clause 3 (c), a 'lobbyist' is defined to not include "an entity or person whose business is a recognised technical or professional occupation which, as part of the services provided to third parties in the course of that occupation, represents the views of the third party who has engaged it to provide their technical or professional services". Given that some members of these consulting professions are engaged in furthering their client's interests by seeking to influence government decision making, there is a logical case for them to also be registered.

In this regard, it may be that the definition of 'lobbyist' could be changed so that there is an obligation to register wherever a service provider engages with a government representative on a client's behalf with the objective of seeking to influence government decision-making.

Professional Association

GRA, Kreab Gavin Anderson and Newgate have, over an extended period of time, discussed the possibility of creating an industry association for the government relations profession. While the sector is relatively small compared to some other professions, our firms believe it is timely to revisit this idea and consider creating an industry organisation that embodies the ethical values of professional government relations practitioners in Australia, engages periodically with those responsible for regulating the profession in various Australian jurisdictions, speaks publicly for the profession where this is appropriate and, over time, may provide a vehicle through which professional education may be provided to practitioners.

This is a matter on which our three firms intend to engage with other participants in the sector over the short term with a view to establishing and advancing the industry group.

Please do not hesitate to contact the undersigned if any further information or views would be useful. If it would be helpful to the Committee's deliberations, we would be happy to provide evidence to the Committee.

Yours sincerely,

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