The Hon Peter Hall QC
Chief Commissioner
NSW Independent Commission Against Corruption

12 June 2019

Public Relations Institute of Australia (PRIA) submission
The Regulation of Lobbying, Access and Influence in NSW: A chance to have your say

Dear Chief Commissioner,

I am writing on behalf of the Public Relations Institute of Australia (PRIA).

We always welcome the opportunity for the assessment of the communication profession, including the regulation of lobbying, access and influence in NSW.

PRIA is the peak body for professional communicators in Australia, with 65 years of continuously enforcing professional ethics and conduct. PRIA is a strong advocate for ethical communication including lobbying. We have many professional members working inside ministerial offices, government organisations, non-profit groups, corporations and consultancies.

There have been a number of deep and thorough reviews of lobbying regulation in NSW during the past nine years. These include the ICAC review 2010, the major reforms process and new legislation introduced in 2014, and the Statutory Review of the Lobbying of Government Officials Act in 2017.

The Lobbying of Government Officials Act 2011 (NSW) has been updated since first introduced, and now applies a set of ethical standards to all third-party lobbyists and other individuals and organisations that lobby NSW government.

In this way NSW is far in front of other national and international jurisdictions.

As recently as December 2018 the NSW ICAC reported it "has not made a corrupt conduct finding against a registered third-party lobbyist and received relatively few complaints against them" and that "the evidence suggests public officials need to be most wary of individuals and organisations lobbying on their own behalf."[1]

Based on the above risk assessment, it is concerning that so much of the ICAC paper focus seems to be applied to that slither of lobbyists that conduct less than 20% of lobbying (Solomon).

The Public Relations Institute of Australia (PRIA) believes the reporting of contact and meetings must be the responsibility of the government representative or employee; it cannot be outsourced to an external party.

[1] NSW ICAC Corruption and integrity in the NSW Public Sector: an assessment of current trends and events, December 2018 P40.

Public servants are employees and can be compelled through their employment agreements to report all interactions they have with external stakeholders. They can undergo systems training and ensure full compliance with internal reporting requirements and codes of conduct.

This was the situation in 2010 for the original ICAC report, and it remains today. It has been reinforced by other organisations such as the Queensland Integrity Commission. "Government representatives need to adopt the strict record-keeping requirements of the Public Records Act where meetings are held with people seeking to lobby them, whether or not those people are registered. (Solomon, 2013, p. 5)

We have some deep concerns with the ICAC discussion paper, which provides some inflammatory emotive statements, rather than research based evidence. For example, it cited Operation Artek as an example relevant to the discussion. An ICAC case search shows Artek involved department staff and corrupt payments. It was totally unrelated to lobbying.

This is just one example of the alarmist and misleading material which is so unlike other NSW Government information that has been used in public reviews and consultations. We would welcome a withdrawal of the current discussion paper to enable evidence-based exploration of the real risks and opportunities to improve lobbying in NSW.

For example, two years ago one of our members conducted a meta-analysis looking at the role of external people who were found to corruptly influence a public official in NSW. The study reviewed the 51 public hearings and associated reports conducted by the NSW Independent Commission Against Corruption (ICAC) between January 2009 and July 2015. During the time period ICAC found around 181 people to be corrupt in NSW.

Nearly half, 46.4 percent, of corruption findings were made against business people, and by far the majority were the owners and directors of companies. Business owners and directors were the second largest corrupt group, comprising 34.25% of all people found to be corrupt. The other 12.15% of corruption findings in the business grouping were made against employees of businesses.

A total of 36.4 percent of all people found corrupt were government employees, only just eclipsing the number of business owners and directors. During the period 6% of people found to be corrupt were elected politicians (seven NSW State politicians) or members of their political office staff (four in total).

Not a single registered lobbyist (or anyone claiming to be a third-party lobbyist) was found to be corrupt.

PRIA welcomed the 2014 inclusion of all lobbying participants in the NSW Code of Conduct requirements. Past exclusion of technical advisors, employees, directors and government representatives from Conduct requirements meant that regulations were poorly targeted when aligned to the role of people actually found to be corrupt by NSW ICAC investigations.

We urge ICAC to take an evidence-based policy approach from these starting points;

- All people and groups in NSW have the right to lobby, and they all have different expertise, knowledge, resources and requirements
- According to ICAC in December 2018 there are no ICAC cases of corruption involving registered lobbyists, and there are no third-party lobbyists on the watch list
- The lobbyist register is designed to create simple transparency of the interest represented by third parties. The register does not, and cannot, control lobbying or provide any insight into the vast majority of lobbying activity in NSW which is conducted by lobbyists such as individuals, executives, advisors, directors, think tanks or associations.
- Lobbying is an activity which must involve defined government players, therefore it can be monitored and regulated through government systems and education

Rightly, as recorded in the NSW Government Review 2017, many of the initial ICAC recommendations have been explored since November 2010 and clearly addressed through mechanisms such as ministerial reporting and the no-exemptions code of conduct.

In its 2017 RIS submission, the ICAC stated that five of the 2010 recommendations related to local government, of the twelve remained some had been implemented and some in alternative ways. The RIS Report stated that the majority had been implemented in various ways. This is in stark contrast to the current papers indicating they have been ignored.

Based on the evidence and feedback from our members who work across the spectrum of Australian government, business, non-profit and contracting, the PRIA believes that the current NSW legislation and regulations are working well. The systems are relatively easy to understand and cost effective for government and citizens. This creates parity and equity.

We would like to flag our concerns that the ICAC seems to have, perhaps inadvertently, promoted changing the current Lobbyist Register to copy laws in other jurisdictions based on the given rationale that those laws are newer. Not because of flaws in the current NSW system. Not because the different systems could increase reach or efficacy. And many of those different systems are bureaucratic processes which have no links to improved integrity, transparency, equity nor accessibility.

The Lobbying Act is just one segment of a holistic preventative and detection system to preserve the integrity of NSW government decision making. The PRIA is happy to further consult with the NSW Government on behalf of our many members who touch government on behalf of their employers, clients and also those who are within government itself.

1. Awareness - Inclusion of all people who lobby

PRIA has been disappointed by the lack of an education and awareness program around the NSW Code of Conduct. This is the first time in Australia that any government has applied a code to all people lobbying government, including staff working for corporations, board directors, industry associations, think tanks and non-profit groups.

The PRIA warmly welcomed the 2014 introduction of a clear Lobbyists Code which applied consistently to any person. This goes some way to address concerns which Dr David Solomon, former integrity commissioner of Queensland, pointed out: that a regulatory focus solely on 3rd party lobbyists leaves unfettered access to business executives and special interest groups.

NSW remains the only jurisdiction to equally apply a code of ethics to participants in the lobbying process, regardless of their employment status or connection to an issue.

There exists confusion about the term 'lobbyists', often seeing it applied only to third party consultants in government affairs, rather than all people who lobby, as is now properly described in the Code of Conduct.

For instance, it is reported that requests for clarification from properly registered third parties are occasionally excessive, and often not matched by requests to inhouse executives or management advisors who gain access without query.

PRIA has offered to support an extensive professional development program using resources within our 18 accredited university partners and professional trainers. PRIA is particularly keen to ensure all our members who are impacted by this Regulation, and the wider community of communication professionals and government relations executives, understand the Code Of Conduct and the impacts on their approach to the NSW Government ministers and employees.

Further work must be done to educate government, corporate and non-executive representatives on their obligations under the code.

2. The 3rd Party Lobbyist register does not reflect majority of active 3rd Parties

Considering that 3rd party public affairs lobbyists are a low risk category, and participate in a minority of lobbying meetings, the operation of the register to deliver transparency of client representation is currently sufficient and the administration is not overly burdensome or expensive.

However, in reality, the coverage of third party has been limited to those who work within public affairs consultancies, and has not touched the many accountants, lawyers, management consultants and financial advisors who daily lobby government on behalf of their clients. We are not recommending that incidental lobbying is included, as a lawyer contacting workcover on behalf of a client is very different from a lawyer contacting a government minister on behalf of a client.

3. Publication of diaries

PRIA believes that the recording of meetings by all ministers is an equitable and relatively simple method to track interactions of government office holders with all people seeking to influence government decisions. This does not need to be expanded to include all contact leading up to those meeting, as is currently required in one jurisdiction. That is cumbersome, expensive and the huge amount of repetition only obscures activity.

Within the diary recording system, clear protocols for protecting commercial in confidence or other sensitive matters such as whistle-blowing discussions should be protected.

This system does not discriminate for or against certain sub-groups of people involved in the lobbying process based on their employment status – consultant, technical advisor, full-time employee or unpaid supporter.

The publication of diaries could be improved to be more contemporary, perhaps on a monthly basis.

4. Guidelines and education for public office holders

The PRIA continues to receive occasional reports that some NSW Ministers refuse to meet with properly registered 3rd party lobbyists, while at the same time they were having discussions with a broad range of business and interest groups which were not recorded or reported.

Up to 50% of the Top Twenty biggest companies in NSW do not use 3rd party lobbyists to approach NSW government (NSW Lobbyist Register website 10 December 2014). Many large businesses have inhouse government relations staff or experienced executives and directors who are not required to register when they hold discussions with government.

It must be noted that often it is smaller businesses or non-profits who engage a public affairs consultant to represent them to government. These companies can be disadvantaged if they are not able to retain a consultancy to assist during their meetings with government. This would be similar to suggesting that organisations with inhouse legal counsel can participate fully in the court system, but organisations which rely on external lawyers cannot have professional representation in court.

With regular changing ministers and staff there is also a constant need for education.

PRIA urges the NSW Government to develop a short training session to be completed by all elected Members of Parliament and their staff to ensure they understand and abide by the Code of Conduct.

This education package should be able to be viewed by all members of the public. This ensures that there is transparency. This training material could also be used as source material in education programs delivered by industry and academia.

5. Administration of 3rd Party Lobbyist Register

At the moment there are eight state, territory and federal 3rd party lobbyist registers. The difference just in the definition of "lobbyist" could explain why many NSW people approaching government do not believe they meet the legislated definition required for all lobbyists in the NSW Code of Conduct.

The PRIA also recommends that the NSW Government works with other legislative bodies across Australia to adopt a reciprocal recognition scheme for 3rd party registers.

Maintaining registration on up to eight government lists is a huge burden with little impact on government integrity that couldn't be gained from a central register or from reciprocal recognition.

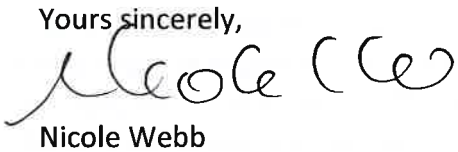
6. In conclusion

PRIA is ready to work with NSW Government to meet the objectives for transparency as outlined in the current set of legislation and regulation. The PRIA supports the NSW Department of Premier and Cabinet's consideration that the objectives of the Lobbyists Code are:

> *"To promote transparency, integrity and honesty by ensuring third-party lobbyists and other individuals and organisations who communicate with NSW Government officials for the purpose of representing the interests of others comply with ethical standards of conduct."*

Please contact me anytime on nicole@impactagency.com.au or Annabelle Warren, past president of the PRIA Registered Consultancies Group, on awarren@primary-pr.com or 02 9212 3888.

Yours sincerely,



Nicole Webb
National PRIA Registered Consultancies Chairman

Specific discussion questions	
Measures to improve transparency	
1. Are there any examples of lobbying laws/practices in other jurisdictions (interstate or overseas) that seem to work well?	NSW is one of the few jurisdictions which provides a uniform code of conduct on the ACTIVITY of lobbying. This is to be applauded and supported. The NSW lobbyist register is unequivocal in purpose – it provides transparency of representation for the "slither" of lobbying which is conducted by 3rd party representatives. Moves to piggyback and regulate the entire ACTIVITY of lobbying through a register of representative is backward thinking. The paper indicated that Victoria now maintains a register of inhouse lobbyists. This is not correct. The Victorian system merely records government affairs directors who have previously worked in Government. It currently lists 53 people working inside 34 organisations, a miniscule proportion of people who lobby. Moves by some jurisdictions for recognition of a partial lobbyist is like being "half pregnant". For instance, the CEO of BHP Billiton meets with government representatives to discuss many issues and opportunities. They should not be exempt from regulation of that ACTIVITY because it is not above 25% of the time they spend at work.
2. Who should be required to register on the Register of Third-party Lobbyists?	The purpose is to clearly identify the interest being represented. All 3rd parties, including lawyers, investment advisors and accounting firms should register if they are liaising with government on behalf of their clients. Industry associations representing their collective industry would not need to register. However, industry association staff representing a particular member should register, especially as many associations, such as the Australian Chamber of Commerce and Industry, represent a huge diversity of clients. Work needs to be done to recognise that 3rd party registration is a very positive action and identifies the clients of a group dealing with government. The rejection of registered lobbyists means that often meetings are held with non-registered groups or individuals, and as ICAC identified in its own 2018 report, these are the people more likely to be corrupt.

3. Should there be a distinction between lobbyists on the register and lobbyists bound by the code of conduct?	PRIA believes that there must be a distinction, as currently exists. The register exists to identify the client being represented by the third party. The code of conduct binds 100% of all people lobbying, regardless of their employment or links to an organisation.
4. Should there be a distinction between 'repeat players' and 'ad hoc lobbyists'?	There is no exemption in criminal codes because someone is only a part-time transgressor and spends 75% of their time as a day care worker. Also, as stated by ICAC, registered 3rd parties do not have a large or worrying record of corruption. Exempting the vast majority of people who lobby government and who have been seen by ICAC itself to have a higher likelihood of corrupt behaviour is completely unacceptable.
5. Should there be targeted regulation for certain industries? If so, which industries should be targeted?	Looking at the ICAC cases, it appears the biggest risk for corruption is in local government or property development. Property development already has additional regulation. Beyond this, a comprehensive and clear system helps adoption by more people. This is very important. Making it more complicated will only impede transparency and equity. Placing restrictions on some groups based on their employment choices and industries without clear evidence would surely be discrimination. We would urge any review to look at the behaviour rather than the industry.
6. What information should lobbyists be required to provide when they register?	The information should be clearly aligned to the purpose of the register. It should also be simple and easy to administer. Only a few of the 3rd party businesses have full time administrators to provide reems of data for no benefit. Many third parties have diverse interests and only represent a client for a tightly scoped task, often a one-off, for example running a community workshop event that might be attended by a minister. Being able to quickly add and update clients is very important. This information provides 'transparency of representation', and that is the purpose of the 3rd party lobbyist register.

7. Should lobbyists be required to provide, or at least record, details of each lobbying contact they have, as well as specify the legislation/grant/contract they are seeking to influence? Should this information be provided only to regulatory agencies or be publicly available?	This requirement seriously constrains the equitable access to government for thousands of companies and non-profit organisations. Based on ICAC's finding that non-registered lobbyists are more likely to be corrupt, it would be better to focus on the 80% of interests who go direct to government. Doing this through a register would be impractical, and this again confirms that managing the process through the government side is more practical and affordable. Members have provided examples of feedback in other jurisdictions where ministerial offices can't take phone calls form registered lobbyists because of the reporting required, not because of any restriction imposed on third party lobbyists. They are allowed to call, but the office of the Minister cannot cope with the red tape entailed. This disadvantages clients who do not have the resources or expertise to liaise with governments. The NSW Government made a very clear decision to focus on the ACTIVITY of lobbying, and record these through the office of the government representative. This has the benefit that systems can be applied consistently, training and process developed to capture equal data. This approach has minimised red tape, keeps expert resources easily available to organisations as and when needed, and ensures that there is a consistent approach. Changing this to be a system which relies on the client to make records is against logical thinking and human behaviour. Imposing such requirements on one group and not another is clearly discriminatory.
8. Should lobbyists be required to disclose how much income they have received and/or how much they have spent on their lobbying activities?	Should every Australian who contacts government disclose their income? Absolutely not! While the intent of the question might just be aiming at third parties, this cannot discriminate unfairly or be spurious conduct.
9. How should lobbying interactions with ministerial advisers, public servants, and MPs be disclosed?	MPs, advisors and public servants should be required to maintain appropriate records in a consistent manner. Please also refer to Answer 7.

10. What information should Ministers be required to disclose from their diaries and when?	The current meeting records are a good balance of information on timing, participants and purpose.
11. How can the disclosures of lobbying regulation best be presented and formatted to better enable civil society organisations to evaluate the disclosure of lobbying activities?	Currently the third-party register can be searched from any device at any time. The Ministerial Diaries could be presented on shorter time periods.
12. Should there be greater integration of lobbying-related data? **E.g. should there be integration of** **(i) information on political donations made by lobbyists;** **(ii) the register of lobbyists;** **(iii) ministerial diaries;** **(iv) details of investigations by ICAC;** **(v) list of holders of parliamentary access passes; and** **(vi) details of each lobbying contact (if reform occurred)?**	Political donations – these are disclosed from individuals and organisations under very clear rules. Records show that very few government relations firms make political donations, and when they do it is often for very small amounts relating mostly to event attendance. As ICAC has reported no investigations of third-party lobbyists, this question seems redundant. Transparency is desirable, but uneven spotlights provide greater areas of shadow. Most lobbying in Queensland for instance is unfettered, as the spotlight is only on 3rd party lobbyists. Transparency must be consistent and manageable across all lobbying activity.
13. Should the NSW Electoral Commission be required to present an annual analysis of lobbying trends and compliance to Parliament?	Lobbying is the conduct of members of parliament and government. The Parliament and the Public Service Commission already have roles to oversee and manage ethics and conduct of public officers. The reporting of conduct and activity of MPs and Ministers is within the DPC (diary and meeting conduct) and the NSW Parliament, including committees. The NSW Electoral Commission manages the 3rd party register, not the records of meetings and the code of conduct. This is a very narrow slither of lobbyists. Compliance with the 3rd party register is currently monitored real-time, with web updates publicly available.
Measures to improve integrity	
14. What duties should apply to lobbyists in undertaking lobbying activities?	The current lobbyists code of conduct applies to all people lobbying the NSW government and clearly defines duties for truthfulness and disclosure.

	These were developed after extensive consultation and we have not been made aware of any information that would drive change at this moment.
15. Should NSW members of Parliament be allowed to undertake paid lobbying activities?	We are not aware that there has been any practice of paying NSW parliamentarians to lobby, outside the payment made by the people of NSW to represent their interests. This would most likely be dealt with under Conflict of Interest disclosures and requirements.
16. Should lobbyists be prohibited from giving gifts to government officials?	The policy for giving gifts is set by the NSW Parliament and the government codes for parliamentarian and public sector staff. It must be uniform for all contact. This was described in detail in the 2017 Statutory Review of the Lobbying Of Government Officials Act.
17. Should the definition of 'government official' be expanded to Members of Parliament?	Clear, published codes of conduct and regulations for all government representatives, elected or employed, helps everyone to ensure transparent and accountable service.
18. What obligations should apply to government officials in relation to lobbying activities?	Government officials should ensure that people lobbying government should all comply with the code of conduct.
19. Should public officials be obliged to notify the NSW Electoral Commission if there are reasonable grounds for suspecting that a lobbyist has breached the lobbyist legislation?	According to a recent discussion with the NSW Electoral Commission, the few instances involved either administrative errors or simply not yet being on the register. There is provision for speedy registration, and the NSW Electoral Commission is to be thanked for ensuring that transparent representation can be quickly arranged during emerging issues, which are sometimes major crises. Public servants and ministerial officers who understand the system and can quickly navigate registration procedures help everyone seeking to resolve issues facing the government which more often than not involve an enormous cross section of people and organisations, including 3rd parties.
20. Should government officials be required to comply with certain meeting procedures when interacting with lobbyists? If so, what procedures are appropriate?	All people meeting with government should be subject to the same rules, meeting procedures and reporting.

21. Should there be a 'cooling off period' for former Ministers, MPs, parliamentary secretaries, ministerial advisers, and senior public servants from engaging in any lobbying activity relating to any matter that they have had official dealings with in? If so, what length should this period be?	The current legislation in NSW applies appropriately to former-Ministers and former-Parliamentary Secretaries for 18 months when they cannot engage in the lobbying of a Government official in relation to an official matter that was dealt with by the former Minister or Parliamentary Secretary This carefully applies to any new role – voluntary, paid or contracted, so is equitable and fair. Restricting employment of staff who are not decision makers would not improve the equity or fairness and could incorrectly restrict employment opportunities.
22. How should a post-separation employment ban be enforced?	This should be managed in the same way that employment contracts are managed.
23. Should lobbyists covered by the NSW Register of Lobbyists be required to disclose whether they are a former Minister, ministerial adviser, MP, or senior government official and, if so, when they left their public office?	PRIA has no objections, and many professionals already outline their CV on websites and LinkedIn. However, why should this be limited to third-party lobbyists, which would leave unfettered over 80% of the active lobbying cohort? Perhaps all people contacting government could include this in meeting requests.
24. Should lobbyists covered by the NSW Register of Lobbyists who are former government officials be required to disclose their income from lobbying if it exceeds a certain threshold? **If so, what should be the threshold? And for how long should this obligation apply after the lobbyist has left government employment?**	PRIA does not endorse disclosing personal information. There has been no link shown between income and corruption, and it would be spurious to seek such information without proper cause.
Promoting the integrity of direct lobbying – other measures	
25. Should there be a requirement on the part of the NSW Government to make a public statement of reasons and processes in relation to significant executive decisions? If so, what circumstances would trigger such a requirement and how might in operate?	The NSW Government should be able to transparently and honestly describe their decisions and rationale.

Fair consultation process	
26.Should there be NSW Government guidelines on fair consultation processes	Consultation is a well recognised and researched area. There may be options to extend consultation.
27. If so, what should be provided under these guidelines in terms of these processes being inclusive, allowing for meaningful participation by stakeholders and promoting adequate responsiveness on the part of government officials?	This is an separate area of work, and could be properly reviewed and explored by the NSW Government.
28. If so, how should these guidelines be integrated with a requirements to provide a statement of reasons and processes with significant executive decisions?	See 25.
29. How can disadvantaged groups be supported by the NSW Government in their lobbying efforts (for example ongoing funding of organisations, and public service dedicated to supporting community advocacy) to promote openness in the political process and to promote advocacy independent of government?	Many organisations with limited financial resources currently use 3rd party lobbyists. Some public affairs consultancies specialise in non-profit or association work. A review of the 3rd party lobbyist register showed approximately 20% of clients were non profit. Many public affairs consultancies also provide pro-bono support for non-profit clients. It would be very helpful if properly registered third party consultancies were recognised as a positive resource and not subjected to unequal access or burdensome red tape. There are also many special interest lobby groups for non-profits.
30. How can the measures to promote the democratic role of direct lobbying be designed so as to have a proportionate impact on the freedom to directly lobby?	The skills and access should be available to all groups and the government should provide easy to understand and open systems that encourage ethical access instead of impeding ethical access.

Measures to improve freedom	
31. Should there be provision for exemption from restrictions on direct lobbying such as the ban on post-separation employment when undue hardship can be demonstrated?	As per Question 21, employment law is an important guide to post-separation restrictions. The current NSW provisions are adequate.
32. Could existing or new regulatory requirements drive improper lobbying practices underground or have a dampening effect on legitimate lobbying?	As shown in the US when the Obama administration introduced recording of every contact, the millions of records obscured activity and drove people to meet outside of the White House. In addition, if irregular people participate, they are less likely to know the regulations and have less regard to endangering their future ability to engage government by unethical conduct.
Measures to improve compliance and enforcement	
33. Is there adequate support for lobbyists and government officials to enable them to understand their obligations under the lobbying legislation?	PRIA has consistently urged the NSW Government to work collaboratively with inhouse and consultant advisors. The industry has distributed information on changing lobbyist regulations and ensured that the latest information is included in conference and industry discussion. The sector would always welcome further training. One issue has been that several NSW ministers and staff have refused to meet with properly registered and nominated third party consultants. This is a detrimental effect, as they should be encouraging people to register and ensuring that NSW organisations have the best possible representation and advice.
34. To understand their obligations in relation to lobbying, should there be training and/or education programmes for ' (i) lobbyists; (ii) public servants; (iii) Ministers; and ministerial advisers? If so, what sort of training or education programme is needed?	The Public Relations Institute of Australia has consistently urged for greater training.
37. Are the sanctions under the lobbyist legislation adequate (i.e. suspension of lobbyists, placing on Watch List, or deregistration)?	The NSW Electoral Commission has indicated that the temporary suspensions from the NSW Lobbyist Register have almost exclusively occurred as a result of unintentional administrative breaches. They have not reported intentional behaviour to corrupt or deceive. A warning process, which includes a time to remedy, would be a sensible inclusion.