

# Submission in response to the State Government Green Paper on Integrity and Accountability in Queensland

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## **Submitted by**

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## 1. INTRODUCTION

This submission has been prepared as a joint response to the State Government's Green Paper by a number of firms listed on the Queensland Register of Lobbyists.

These firms (the "Signatories"), whose representatives' signatures appear below, provide this joint submission to demonstrate the collective views of a number of experienced government relations advisors.

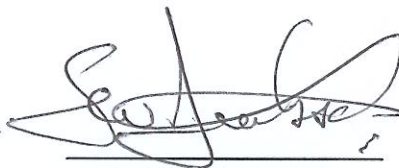
Between the firms listed below, and their staffs, there is represented more than 250 years of government relations experience, including as Ministerial Advisors and/or public servants in various governments and as private sector consultants.

This submission deals solely with responses to those issues raised on the topic of "Lobbying".

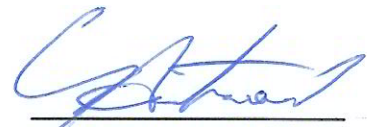
The Signatories provide this submission as their formal response to the Green Paper but strongly request that they be consulted by the government prior to any proposed changes to the Queensland Contact with Lobbyists Code and/or the Register of Lobbyists.



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## 2. OVERVIEW

As a participative democracy, Queensland operates on principles of open and accessible government – where citizens can have their say and interact with elected Members of Parliament. Citizens includes business citizens, who equally have a right to government interaction.

For some years, Queensland has been one of the most open and accessible governments in Australia and it would be a tragedy if that status changed for the worse.

Access has been and is available to business, not-for-profit groups and charities, special interest groups and the general public. The Community Cabinet system is a good example of participative democracy.

New Zealand Prime Minister John Key told a business lunch in Brisbane in August 2009 that “the role of government is not to pick winners, it is to provide the framework under which business can operate”. Good government and the framework it sets must include good discussion and engagement with the electorate – including with its business citizens.

Businesses retain the services of insurance brokers to find and negotiate the best insurance deals, they retain law firms to advise on industrial relations and commercial law, and they retain business advisers to assist with issues such as corporate governance, finance and strategy.

The complexity of the issues with which business deals with government, and the importance of business activity in propelling the economic wellbeing of the State, make it imperative that such interaction is undertaken in a timely and efficient way. Some businesses choose to use government relations advisors to assist them in this process, and their right to utilize professional assistance is an extension of their democratic right to interact with Government.

Government relations advisors provide counsel to their clients/employers on:

- Government processes (for example, the process of gaining approvals for major developments, or bids for government tenders)
- Misalignments between policy and regulation within government, and between levels of government
- Development and interpretation of legislation and regulation
- How government departments function
- Awareness of community issues/public trends and the political debates of the day
- As government is ‘their subject’ they monitor and maintain a watching brief on government policy, statements of philosophy and intent

In a complex economy, most businesses need to interact with government. Some choose to do this through the employment of in-house Government or Corporate/External Affairs Advisors. Others choose to outsource either some or part of their Government or Corporate Affairs functions to consultants, such as those who are signatories to this document.

It is often only the largest businesses that can afford to employ full-time, in-house government relations advisors. Even then, those same firms often also engage external consultants to provide specialised advice. Small and medium sized businesses, which are usually locally owned, generally do not have the resources to employ full-time, in-house government relations advisors and rely on the specialist advice of external consultants to enable them to compete professionally, competently and on an equal footing with larger rivals.

Good government relations advisors provide an important service to the business community by helping businesses to understand and prepare diligently to deal with government.

Advisors can also help government understand and prepare for dealing with business.

By advising clients how to identify relevant government policy, and use it as a guidebook for their business, government relations advisors help to ensure that the policies of governments can be supported and embraced by their clients. In turn, this can improve the likelihood that government will find the initiatives presented to it more acceptable and worthy of support, ie in-tune with government policy/priorities. It is a process of aligning commercial and government objectives to promote agreement and collaboration for community benefit.

This is a legitimate, responsible approach to doing business.

It is not about buying access or favours, or pressuring bureaucrats or Ministers. These sorts of practices have no place in a strong democracy and, if they are found to exist, should be stamped out with vigour.

To be successful, good government relations advisors must have the trust and confidence of their clients, and the trust and confidence of the governments with whom they interact. To achieve this trust, government relations advisors must consistently demonstrate honesty and integrity.

It is appropriate, therefore, that the "rules of engagement" under which government relations advisors operate are open and transparent.

While the vast majority of people working in the industry are experienced in the processes of government, the reality is that any individual can hang out a shingle and call themselves a lobbyist or government relations advisor.

A Government Relations Advisors' Code of Conduct (as proposed in this submission) will provide a moral compass and set of principles under which all competent and legitimate government relations advisors can operate.

The industry needs to work closely with Government to ensure that a proactive, practical approach results in transparent and exemplary processes which set a benchmark for the rest of Australia – and which have the confidence of the business community and general public.

### 3. THE QUEENSLAND CONTACT WITH LOBBYISTS CODE

The Signatories:

- Recognise and support the Queensland Contact with Lobbyists Code and the Register of Lobbyists
- Register their disappointment/dissatisfaction that no attempt was made to engage or consult with industry practitioners prior to the development of the Register and the State Government's Contact with Lobbyists Code
- Recommend that sections of the Contact with Lobbyists Code be amended as follows:

**Clause 3 Definitions** re: "Lobbyist' does not include" should be extended to include a new sub-clause: "an entity or person undertaking community and stakeholder engagement activities, whose purpose is solely to inform stakeholders and not to influence decisions of government."

**Clause 9 Registration.** Amendments must be made to include a right to natural justice, as follows:

**Clause 9.1 (b) (ii):** The words "...is considered to be inconsistent with general standards of ethical conduct" should be amended to specifically reference the Government Relations Advisors' Code of Conduct submitted as part of this joint submission, ie "...is considered to be inconsistent with the Government Relations Advisors' Code of Conduct".

The new paragraph should read, in its entirety: "any prior or current conduct of the Lobbyist or association of the Lobbyist with another person or organisation is considered to be inconsistent with the Government Relations Advisors' Code of Conduct;"

**New sub-clause 9.1 (c):** Notwithstanding the preceding clauses, the Director-General shall not refuse to accept an application to be placed on the Register of Lobbyists nor remove a lobbyist from the Register, under clauses 9.1 (a) and (b), unless the Director-General has advised the lobbyist concerned of the reasons why he or she proposes to refuse an application or remove the lobbyist from the Register, and given the lobbyist concerned an opportunity to state why the proposed course of action should not be followed.

**New sub-clause 9.1 (d):** Where an appeal by a Lobbyist against a decision of the Director-General is unsuccessful, the Director-General shall, at the request of the Lobbyist, refer the matter to the Integrity Commissioner for independent review and determination.

## **4. SPECIFIC RESPONSES TO THE GREEN PAPER QUESTIONS**

### **4.1 The Queensland Government has announced it will ban success fees, using the Canadian model – are there any additional changes to regulating lobbyists that would enhance integrity and accountability in public administration?**

The Signatories support the Green Paper's position that "Accountability and transparency in public administration is at the heart of a robust democracy". The Signatories further support the Contact with Lobbyists Code Preamble that "Free and open access to the institutions of government is a vital element of our democracy."

Queensland already has the most comprehensive lobbyist regulations in Australia. It is the Signatories' belief that the system which was introduced in February 2009 ensures there is a high level of transparency and openness.

However, there are additional changes to regulating lobbyists that would enhance integrity and accountability in public administration. The Signatories argue that if maintaining a register and regulating and monitoring the behaviour and business practices of third party lobbyists improves the integrity, accountability and transparency of Government, then logically the same principles should extend to all individuals or organisations that approach Ministers, Parliamentary Secretaries, Ministerial staff members or public servants on behalf of their employer or on behalf of a third party.

#### **4.1.1 In-House Government Relations Advisors**

The Signatories recommend amendments to the Contact with Lobbyists Code, in line with the Canadian model, to include those individuals whose duties include communicating with public office holders on behalf of an employer. This amendment would repair the current anomaly and require government relations advisors who work in-house for a corporation or organisation to be captured by the Contact with Lobbyists Code and to register on the Lobbyist Register.

#### **4.1.2 Other Professions**

The Signatories further request that the Government upholds its Code and allows meetings only with third parties who are registered on the Lobbyists Register. At present, third parties such as town planners, lawyers, accountants and communications/public relations consultants are establishing and attending meetings on behalf of their clients, in good faith, yet are not required to register on the Lobbyists Register.

Legal and accounting firms, for example, initiate and participate unchecked in activities that are regulated for third party lobbyists. They do not have to register their client details on the Lobbyists Register, do not have to disclose the nature of how they are paid for services, and are not required to adhere to the Contact with Lobbyists Code. Additionally, the employees of these firms are permitted to participate on government boards and in other significant positions - a right that has been denied to individuals on the Lobbyist Register.

Unless these anomalies are rectified, there may be an increase in the practice of such firms employing in-house government relations advisors who are then contracted out to a variety of clients as an element of the firm's specialist services, without the need to register on the Lobbyists Register.

Conversely, there is recent evidence where Ministerial offices have requested that lobbyists on the register not attend meetings\*, (even though their clients have requested it), due to an over-cautious approach by the government. This penalises lobbyists for being transparent, breaches the spirit of the Contact with Lobbyists Code, and is inconsistent with the Government's confirmation that lobbying is part of the democratic process.

[\*This extract is from a 2 September 2009 email to a client – who is listed properly on the Register of Lobbyists by one of the signatories to this submission: "Please note that Minister xxxx cannot have any Lobbyists at the meeting."]

#### 4.1.3 Company Directors

Another group who may be legitimately engaging in lobbying without being required to register on the Lobbyists Register is Company Directors. They are not exempted by the full-time employee exemption, but it seems widely accepted in practice that they do not need to register. Most Directors would regard advocacy on behalf of their company as part of their responsibilities, and many professional Directors have regular access to the highest levels of Government. Many Directors are on more than one Board and so may make representations on behalf of more than one entity.

#### 4.1.4 Amendments to the Contact with Lobbyists Code

To correct these anomalies:

The Definition of "Lobbyists" contained in the Code should be amended:

- In the main paragraph, add the words "...of their employer or..." before the words "...a third party..."

The new clause should read, in its entirety: "Lobbyist' means a person, body corporate, unincorporated association, partnership or firm whose business includes being contracted or engaged to represent the interests of their employer or a third party to a Government Representative."

- To delete sub-clause (c).

Lawyers and town planners (and engineers and accountants) can and do lobby on behalf of their clients to government. In many instances, a government relations advisor is sitting with a lawyer and town planner in the same meeting with a Government Representative, all trying to progress an issue on behalf of a client. However, the government relations practitioner is a "lobbyist" and must be included on the register, yet the lawyer and town planner are providing "technical or professional services" and are not defined as lobbyists. This is incongruous and discriminatory.

- To delete sub-clause (d) "a full-time employee of an organisation or firm that represents their own interests to a Government Representative".

Under the current Code, a Ministerial Policy Advisor to the Minister for Mines and Energy, for example, could leave Government tomorrow and work as a full-time employee for a mining company and is freely able "...for a period of eighteen months after they cease public sector employment, engage in lobbying activities relating to any matter that they had official dealings with in their last eighteen months in public sector employment". However, the same Ministerial Policy Advisor who left Government tomorrow to work in a firm which provided third party government relations advice to the same mining company is captured by these restrictions (as per Clause 7.3 of the Code).

Or a former Transport and Main Roads bureaucrat can work for a trucking company as an in-house government relations advisor the day after they retire. Yet, that same former bureaucrat is barred for 18 months from working at a consultancy and providing the same services and advice to that trucking company as an outside consultant. The same in-house person is also eligible for appointment to a government board, whereas, as a lobbyist, he or she is not. This is an anomaly which must be rectified.

As a further illustration, the 18 month to 2 year buffer was first recommended by the CMC in its report on a former Director-General. Under the current application of the buffer period, that former Director-General could still be the CEO of the training company that was part of the CMC investigation.

The need to clarify the situation with respect to Company Directorships is also evident in such examples. A former Parliamentarian or senior bureaucrat may take up multiple paid Directorships immediately upon leaving Government, and then lobby on behalf of their companies without being on the Lobbyists Register. They may also sit on government boards – an opportunity now denied to individuals registered on the Lobbyists Register. This anomaly should be rectified.

#### **4.2 Is the Department of Premier and Cabinet the appropriate body to oversee the Lobbyist Register? If not, who should oversee the register?**

The Signatories recommend:

- responsibility for the administration of the Contact with Lobbyists Code and the Lobbyist Register should remain with the Department of Premier and Cabinet; and
- responsibility for determining any dispute between a Lobbyist and the Department of Premier and Cabinet should vest in the Integrity Commissioner.

The Commissioner primarily provides advice on whether public officials may have a conflict of interest. The Commissioner, if asked, is also responsible for giving the Premier advice on issues concerning ethics and integrity standards and building the public's awareness about ethical issues. It would be an appropriate and logical extension of the Commissioner's role to include independent responsibility for hearing and determining a Lobbyist's appeal, dispute or other irresolvable query .

The Signatories recommend that the draft Government Relations Advisors' Code of Conduct in this submission be further developed in consultation with the Integrity Commissioner to ensure that both the "independent umpire" and the government relations advisors all agree on the content and application of the Government Relations Advisors' Code of Conduct.

#### **4.3 Should the Contact with Lobbyists Code be expanded to include other provisions which lobbyists must adhere to?**

##### **4.3.1 Appropriate, responsible and reasonable expansion of the Contact with Lobbyists Code should be achieved as follows:**

- (As referenced above), the Signatories recommend that the industry work with the Integrity Commissioner to review and finalise the Government Relations Advisors' Code of Conduct. This Code presents a set of principles and guidelines – a moral compass - against which professional government relations advisors would conduct their activities.
- Further (as stated above), the Government Relations Advisors' Code of Conduct should be specifically referenced in Clause 9 of the Contact with Lobbyists Code, ensuring an additional, public layer of professional conduct is included in the Contact with Lobbyists Code.

##### **4.3.2 The Signatories do not support any move to require additional reporting of lobbying activity. The Signatories support the Contact with Lobbyists Code preamble that: "The public has a clear expectation that lobbying activities will be carried out ethically and transparently, and that Government Representatives who are approached by Lobbyists are able to establish whose interests the Lobbyists represent so that informed judgments can be made about the outcome they are seeking to achieve." These objectives are met in full through the proper use and maintenance of the Lobbyists Register and adherence to the Contact with Lobbyists Code and the Government Relations Advisors' Code of Conduct.**

Further, a requirement for further reporting could directly conflict with the strict confidentiality undertakings which can be required by private companies to protect commercial-in-confidence information. Such confidentiality clauses are incorporated into service agreements or employment agreements and are binding on government relations advisors, whether external consultants or in-house employees.

Additionally, the compliance costs for companies/individuals for any additional reporting and the increased bureaucratic burden would be onerous.

No further reporting is required.

**4.4 Should a person be required to sign a copy of the Contact with Lobbyists Code to indicate their acceptance of its requirements before they can be placed on the Register of Lobbyists?**

Lobbyists are already required to provide a statutory declaration regarding any criminal history as part of the regulation process.

By registering as a lobbyist, an individual is clearly accepting the Contact with Lobbyists Code which frames the Register and exposing themselves to its potential sanctions. Further paperwork is unwarranted and unnecessary.

**4.5 Should the government require that lobbyist-client contracts contain certain standard provisions?**

No.

The Government Relations Advisors' Code of Conduct, subject to its finalisation, sets down the rules and principles by which a government relations advisor will act.

The Contact with Lobbyists Code and the Government Relations Advisors' Code of Conduct stipulate that lobbyists shall "Not make misleading, exaggerated or extravagant claims about the nature or extent of their ability to achieve outcomes".

Great care should be taken when considering the imposition of definitions or interpretations on a contract between two private parties.

Government relations advisors offer their services on the basis of their knowledge and understanding of the government process. It is incongruous to expect them to state that their capacity to engage with government is merely average (not superior or expert). All professional services industries rely on their ability to attract and service clients on the basis of experience, knowledge and expert advice, eg lawyers, accountants, town planners, public relations professionals. It would be discriminatory for government relations advisors to be restricted from appropriately and properly marketing their services.

**4.6 Should registration on the Register of Lobbyists be subject to good-character requirements? Who should assess applications to determine whether an applicant is of good-character?**

Lobbyists are already required to sign a statutory declaration confirming that the individual "...has never been sentenced to a term of imprisonment of 30 months or more and has not been convicted, as an adult, in the last ten years, of an offence, one element of which involves dishonesty, such as theft or fraud".

It would be harsh and discriminatory for a further "good character" test to apply to government relations advisors, when there is no such test for the Members of Parliament or the government employees with whom a government relations advisor may interact. With respect to the specific parties likely to participate in a "lobbying activity":

- Ministers must comply with the Ministers' Code of Ethics which sets down rules relating to accountability, fairness, conflicts of interest and responsibility, among others
- MPs must comply with the Code of Ethical Standards for the Legislative Assembly of Queensland which sets down six Fundamental Principles of behaviour, and includes provisions to deal with conflicts of interest, registers of interest and other disclosures
- Public servants must comply with the Public Sector Ethics Act
- Government relations advisors are required to sign a statutory declaration (which in itself affirms aspects of good character), must conform with the Contact with Lobbyists Code, and will abide by the Government Relations Advisors' Code of Conduct which (it is proposed) will be given effect through specific reference in Clause 9 of the Contact with Lobbyists Code

All these sets of rules and regulations are binding and carry penalties/sanctions for breaches.

Those who choose to work as government relations advisors generally have a career history in government or Parliamentary processes. The foreword to the Green Paper implies that those who have worked in government have no right to make money upon leaving government, because they might use information they have gained in their earlier role. This rationale is offensive to many people who have dedicated significant periods of their life to public service. The whole process of knowledge development involves the application of past learnings to future tasks. Improper or illegal use of information should be punished – and laws already exist to deal with such circumstances - but the appropriate application of knowledge is a legitimate and legal activity. The two should not be confused.

Many government relations advisors are either former Ministerial Advisors – whose good character and integrity was acknowledged and accepted by their employer (the government) – or former public servants who worked in accordance with the Public Sector Ethics Act and the Public Service Act. Character attaches to the individual and not to the job. Good character does not disappear with a change of employment and it is discriminatory to suggest special rules are required for one segment of the business community.

No "good character" test is required for government relations advisors. This would be highly discriminatory, onerous and out of proportion to any standard applied to any other party likely to be involved in a "lobbying activity".

## **5. GOVERNMENT RELATIONS ADVISORS' CODE OF CONDUCT**

The Signatories have developed a draft Government Relations Advisors' Code of Conduct. In researching and drafting this Code, the Signatories have reviewed, and in some instances incorporated elements of, the following sources:

1. Queensland Contact with Lobbyists Code
2. NSW Government Lobbyist Code of Conduct
3. Commonwealth Lobbying Code of Conduct
4. Hawker Britton's code of conduct
5. Public Relations Institute of Australia Code of Ethics
6. Media Entertainment and Arts Alliance Code of Ethics for journalists
7. Planning Institute of Australia Code of Professional Conduct
8. The Institution of Engineers, Australia, Code of Ethics
9. The Queensland Ministers' Code of Ethics
10. The 51<sup>st</sup> Parliament Code of Ethical Standards, Legislative Assembly of Queensland

As set down above, the Signatories recommend the draft Government Relations Advisors' Code of Conduct be reviewed and finalised with the Integrity Commissioner and be specifically referenced through an amendment to Clause 9 of the Contact with Lobbyists Code.

## (DRAFT) CODE OF CONDUCT FOR GOVERNMENT RELATIONS ADVISORS IN QUEENSLAND

### PREAMBLE

Free and open access to the institutions of government, and the rights of individuals and organisations to promote and exchange views with government, are basic tenets of a strong democracy.

But the operations of government can be challenging, which is when individuals and organisations seek the professional advice of specialists who provide counsel on the intricacies of dealing with government.

Through the provision of advice to individuals and organisations on public policy processes, and by facilitating contact with government, government relations advisors perform an important and legitimate function in the democratic process.

### PRINCIPLES OF CONDUCT

Respect for the democratic process and the institutions of government are the fundamental principles which underpin good government relations.

In pursuit of quality outcomes for clients, government relations advisors:

- Commit themselves to conducting their activities in accordance with public expectations of transparency, integrity and honesty; and
- Strive for ethical behaviour, client service excellence, equality of opportunity and social justice.

Government relations advisors are committed to uphold the principals of the Code of Conduct and encourage their employers, clients and prospective clients to demand adherence to the Code.

The purpose of the Code of Conduct is to provide guidance and support to government relations advisors to ensure they undertake their activities with the highest ethical and professional standards and earn the confidence and respect of government and the community.

This Code of Conduct provides a statement of principles upon which government relations advisors shall conduct their activities. A breach of any one principle shall be regarded as unethical conduct.

Ultimately, the integrity of government and its functions relies upon the integrity of the individuals who participate in its processes.

## CODE OF CONDUCT

Government relations advisors shall not engage in any conduct that is detrimental to their personal reputation or to the reputation of their employer, their clients, or to the practice of good government relations. Government relations advisors shall:

1. Act with honesty, integrity and good faith and avoid conduct or practices likely to bring discredit upon themselves, their employer or their clients;
2. Not undertake work for success fees;
3. Apply their skill and knowledge to diligently advance and advocate their clients' interests, without compromising any other obligation under this Code;
4. Not make misleading, exaggerated or extravagant claims about the nature or extent of their ability to achieve outcomes;
5. Use reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided by and to clients, and to the public, government and agencies;
6. Not knowingly disseminate false or misleading information and take care to avoid doing so inadvertently;
7. Advise clients where their objectives may be illegal or unethical, and refuse to act for a client in pursuit of any such objective;
8. Not engage in conduct that is corrupt, dishonest or illegal, or causes or threatens any detriment;
9. Identify themselves, their employer (where relevant) and their client when making contact with a government representative;
10. Disclose to clients any actual or potential conflict of interest;
11. Keep confidential all information provided to them during the course of their work and not disclose or use that information without the express approval of the legal owner of that information, or where required by law, or where necessary to prevent a substantial damage to the public interest;
12. Where relevant, take reasonable steps to inform themselves, their clients and employers of any social, environmental and economic consequences which may arise from their actions;
13. Promote the elimination of discrimination on the grounds of race, creed, gender, age, location, social status, disability or any other form of unlawful discrimination;
14. Keep separate from their government relations activities any personal activity or involvement on behalf of a political party.