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# Submission: Integrity and Accountability in Queensland

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## INTRODUCTION

The SAS Group welcomes the decision by the Queensland Government to undertake the Integrity and Accountability in Queensland Review (the Review). This response focuses specifically on the issues contained in the Review which relate to lobbying.

**Lobbying is a legitimate business activity under our democratic system.** Unfortunately, some elements of the lobbying industry have come under recent criticism. The Queensland Government is responsibly seeking to ensure that lobbying of Government is conducted in an ethical, transparent and accountable manner. This goal is not isolated to Queensland, with similar policy conversations being held in other States of Australia and overseas in countries including the USA, Canada and the United Kingdom. Lessons learnt in those jurisdictions are worthy of consideration in the context of the Queensland Review.

The starting premise for consideration of lobbying is the current framework operating in Queensland. The Queensland Government introduced the **Contact with Lobbyists Code** (the Code) and **Register of Lobbyists** in 2009. The Government website advises that the “Contact with Lobbyists Code ensures that contact between Lobbyists and Government Representatives is conducted in accordance with public expectations of transparency, integrity and honesty.”

There was widespread support and acceptance of the introduction of the Code in Queensland (following similar Codes introduced nationally and in Western Australia and New South Wales). Since being introduced in 2009, **the Code has had insufficient time to become fully operational**, both from the perspective of industry and government, prior to subsequent changes and the establishment of the Review.

Any such framework requires considerable work and time to ensure that it is adopted by all relevant individuals and organisations, that it is being implemented effectively, and that appropriate monitoring and reporting regimes are established. The implementation of the current Code was still in its early stages as evidenced by:

- a) The observation that only a limited number of individuals and organisations had registered on the Lobbying Register. This number has only recently increased to around 80 organisations, the majority of which are government relations, lobbying and communications firms. Even given the limited definition of lobbyists under the Code, it is inconceivable that a considerably larger number of individuals and firms haven't engaged with Government since its introduction.
- b) The understanding that the Queensland Government was still in the process of strengthening the monitoring and compliance regime with respect to the Code as originally introduced.

The Government's announcements in July to modify the Code and place **further restrictions on the lobbying sector was seen as largely unnecessary** by lobbying firms, and also by many in industry, who felt that the amendments were made in part as a response to media pressure rather than

considered policy. Whilst not questioning the rights of the media, many in industry considered that the coverage failed to highlight:

- a) The checks and balances that had only recently been introduced by the Government through the Code and Lobbyist Register.
- b) The considerable probity measures and other stringent processes applied by the Queensland Government in its decision processes on contracts, tenders, etc.

Notwithstanding, representatives in the lobbying sector accepted the position adopted by the Government in relation to success fees and the restriction on Labor Members of Parliament attending exclusive political fund raising events.

**An unfortunate, inequitable consequence since the announcement of the Review** is that the government relations industry has experienced considerable frustration in conducting its business and has suffered a loss of market position. This has been caused by deliberate efforts to discredit the sector in the media (especially where there has been no inappropriate behaviour such as the issue of legitimate success fees), and the restrictions imposed on lobbyists in being able to directly access Government. This has been further exacerbated through a failure to recognise that most government relations firms provide a wider range of services, and that the undeserved and critical attention has had a flow-on effect onto these other business activities.

Having placed these concerns on the public record, the SAS Group acknowledges that this **Review provides the opportunity for Queensland to take a national leadership position** in relation to the effective, ethical and transparent operation of the lobbying sector.

## DEFINITION OF LOBBYISTS

**A key objective of the Review** is to identify mechanisms to improve the integrity, transparency and accountability of government. The Review was established in part as a response to the recent media coverage and community concerns of lobbyist practices in Queensland (and other States) and the connection between lobbyists and Government. These included perceptions of cronyism, inappropriate access and influence, the notion that payment was required for access to politicians, transparency between Government decision processes and lobbyists, etc.

It is essential for Government that it **instils public trust and confidence in its decision processes**. The SAS Group supports the creation of a strengthened framework that ensures honest, transparent and accountable practices exist between Government and individuals and firms engaged in lobbying Government.

**A major deficiency in the Review** that jeopardises the potential achievement of this very important goal is that it only considers 'professional third party' lobbyists. The definition of lobbyists is too narrow. A wide variety of individuals and organisations actively and legitimately engage in lobbying to represent the interests of clients. However, other than third party professional lobbyists, these other categories are expressly excluded from coverage under the current Code and they are not specifically considered within the body of the Review document.

**These limitations and omissions represent the most significant risk to achieving the stated objectives of improving the integrity, accountability and transparency of Government.**

In the current Contact with Lobbyist Code the definition of Lobbyists is as follows:

*"Lobbyist" means a person, body corporate, unincorporated association, partnership or firm whose business includes being contracted or engaged to represent the interests of a third party to a Government Representative.*

*"Lobbyist" does not include:*

- 1. An association or organisation constituted to represent the interests of its members (e.g. An employers group, a trade union or a professional body such as the Queensland Law Society);*
- 2. A religious or charitable organisation;*
- 3. 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 (e.g. Lawyer or accountant); or*
- 4. A full-time employee of an organisation or firm that represents their own interests to a Government Representative.*

**These exempted categories are lobbyists;** so under this definition and as contained in the Review, third party lobbyists are singled out for disproportionate treatment.

Therefore, if the proposition as proposed in the Review is accepted that the integrity, accountability and transparency of Government is improved through adopting a Code of Conduct, a register of lobbyists, and a framework of regulation and monitoring of the behaviour and business practices of third party lobbyists, then it must equally be true that **all individuals and organisations that approach Ministers, Parliamentary Secretaries, Ministerial Staff Members or members of the public service on behalf of a third party should be similarly regulated.**

**Failure to do so would continue to expose Queenslanders to:**

- a) Inconsistency in policy and practice in its engagement with lobbyists;
- b) Bias in terms of the treatment of various sectors of industry, raising the question of anti-competitive behaviour;
- c) Providing advantageous pathways for accessing Government without the requirement for compliance with appropriate behavioural standards covered in the Code; and
- d) Suggestions that inappropriate behaviour can continue.

**In such case the Government will fail to achieve its aim to “ensure that contact between lobbyists and government representatives is conducted in accordance with the public expectations of transparency, integrity and honesty”.**

The SAS Group advocates the following positions:

- a) The Contact with Lobbyists Code should be revised to account for the recommendations contained in this submission;
- b) The Code should be expanded to introduce a new Code of Conduct for Government Relations Practitioners (Code of Conduct). A draft Code of Conduct is provided in Attachment 1 and would replace Section 8 of the current Code;
- c) The current manual register system should be converted as a priority to an electronic Lobbyist Register for the disclosure of lobbyists and third party clients (similar to the Commonwealth system);
- d) All individuals and organisations engaged in lobbying Government should be covered by and must comply with the Contact with Lobbyists Code and the Government Relations Code of Conduct;
- e) All individuals and organisations lobbying on behalf of third parties, except for registered industry, employer and employee associations (lobbying on behalf of members), should be required to disclose their clients on the Lobbying Register; and
- f) All individuals who are direct employees, full time contractors or public office holders (such as Directors) of an organisation, and whose role includes professionally lobbying on behalf of the organisation, should be disclosed in a distinct section of the Lobbyist Register.

## INDUSTRY ASSOCIATIONS, EMPLOYER AND EMPLOYEE ORGANISATIONS

The SAS Group acknowledges that there is practical merit in exempting registered **industry associations, employer and employee organisations** from including their members on the Lobbyist Register; however these organisations should be required to adhere to the Contact with Lobbyists Code and the Code of Conduct.

Furthermore, in relation to these bodies there may also be merit in considering whether they should be required to list on the Lobbyist Register all non-members for whom they are engaged to lobby. This would ensure consistency of treatment across third party clients.

## LEGAL, ACCOUNTING AND OTHER FIRMS

The exemption that applies for **legal and accounting firms and other firms that provide technical advice** (such as engineers, town planners, architects, medical consultancies, communications firms etc) is also inconsistent with the aim of improving integrity, transparency and accountability.

It is common knowledge and practice that **many such firms engage in direct lobbying** on behalf of clients that would be caught under the Code if the same service was provided by a third party lobbyist. Everyday examples of this include gaining access and attempting to influence government decisions on contracts, tenders and other outcomes where such firms work on behalf of their client. Such firms regularly coordinate functions and events with Ministers and Government Officers for the purpose of providing **direct access for their clients and other third parties**. Again, failure to capture the lobbying activities of these firms leaves open to question the integrity of the system.

Many of these legal and accounting firms regularly initiate and participate in activities that are already regulated for third party lobbyists, and are proposed to be strengthened under this Review. They currently do not have to register their client details on a public register; generally do not have to disclose the nature of how their clients pay for services, and are not required to adhere to the Code with respect to their dealings with clients and Government. Another clear example of this dichotomy is that these firms are permitted to participate on Government boards and other significant positions; a right that is now denied individuals on the Lobbyist register. Yet **many of these firms have significant commercial contracts with Governments in their own right, and additionally, actively lobby and represent the interests of their clients to government.**

It is also worth noting in relation to these firms that in:

- a) The United States of America, legal firms that carry out lobbying activities are generally required to register as Lobbyists, adhere to appropriate regulation (including Codes) and are required to report on a range of specific measurements.
- b) Canada, legal firms are also required to register as lobbyists.

As such, it is strongly recommended that the current exemption for legal and accounting firms and firms offering technical advice be removed and that they be:

- (a) Covered by the Contact with Lobbyists Code and the Code of Conduct to the extent of their services and activities that fall within the definition of lobbying;
- (b) Required to list their clients and the basis of payment as per third party lobbyists; and
- (c) Required to list all officers within their organisations who engage in lobbying and that these officers are subjected to the same requirements as currently exists for third party lobbyists.

## EMPLOYEES, CONTRACTORS, PUBLIC OFFICERS

A further category that warrants consideration under this review is **organisations that have employed individuals** responsible for lobbying (other than representative bodies). The Code reasonably places restrictions on the time required before former politicians, advisors and public servants can work for a third party lobbyist. There is no such restriction on working directly for organisations except in relation to their specific previous portfolio responsibilities. Notwithstanding Ministers, Parliamentary Secretaries, Ministerial Staff Members and members of the public service are able to use their often considerable networks and influence across the other portfolios -their former colleagues.

To ensure integrity, accountability and transparency of government processes, it would also appear essential that organisations (companies, charities, religious organisations, etc) that have employees who directly engage in lobbying should also be:

- (a) Disclosed to the public on the Lobbyist Register (through a separately identified section of the register);
- (b) Required to comply with the Contact with Lobbyists Code and the Code of Conduct; and
- (c) Required to list all employees and officers within the firm who are engaged in lobbying Government, including Public Officers and Company Directors.

## QUESTIONS CONTAINED IN THE REVIEW

### ADDITIONAL CHANGES TO REGULATING LOBBYISTS

**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 SAS Group holds the following positions:

- (a) The decision by the Queensland Government to ban success fees under the Code is accepted, noting however that prior to this decision, success fees were a legitimate payment method for lobbying services.
- (b) Payment of fees contingent to success remains common practice in industry, including potentially in some sectors which actively engage in lobbying that are currently exempt from the Code (eg: architects paid fees contingent to relaxation of planning laws, or the banking sector paid fees contingent upon their client securing Government contracts). Individuals and organisations that fall into these categories are currently exempt from the Code.
- (c) There are already adequate provisions to ensure there is clarity with respect to whose interests are being represented by third party lobbyists, including thorough requirements of disclosure under the Code and through the Lobbyist Register. However this is not the case in relation to other individuals or organisations that currently fall outside of the Code (as discussed in the preceding section).
- (d) The responsible efforts of Government to enhance integrity and accountability in public administration through these measures will be significantly compromised if it fails to fully address the restrictive coverage of the current Code and the exemptions provided to a wide range of individuals and organisations actively engaged in lobbying Government.

### APPROPRIATE BODY TO OVERSEE THE LOBBYIST REGISTER

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

The SAS Group holds a preference that the responsibility for overseeing the Lobbyist Register and adherence to the Code remains with the Department of Premier and Cabinet, however, that there is an open and transparent avenue of recourse through to the Integrity Commissioner. This recourse should be available to members of the community, clients and lobbying firms. In the latter case, this should include recourse if there is dispute between the Government and the lobbyist firm.

### OTHER PROVISIONS IN THE CODE

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

The SAS Group is concerned that there are already inconsistencies between the various Australian jurisdictions in relation to the lobbyist registers and codes of conduct. Ideally, a nationally consistent approach should be adopted.

The SAS Group strongly **opposes any expansion of the record keeping requirements**. The Canadian system for example is highly process focused and is administratively burdensome for all involved; clients, individuals and firms involved in lobbying, Government Ministers and representatives and the government agency that manages the system. There is no apparent value in such 'micro level' disclosure. The SAS Group also strongly opposes the USA system of disclosing revenue measures generated from government relations activities. This level of disclosure is entirely unwarranted, could be seen as being anti-competitive and could foster predatory practices within the sector.

**A far more efficient and relevant system** would be to:

- a) Maintain the higher level disclosure such as that contained in the current Code and Lobbying Register;
- b) Expand current provisions to ensure that:
  - a. All individuals and organisations that engage in lobbying are required to comply with the Contact with Lobbyists Code and the Government Relations Code of Conduct.
  - b. Industry Associations and Unions are required to register on the Lobbyist Register with the same discloser as required for third party lobbyists, but only with respect to individuals and organisations that are not members of an Industry Association or Union.
  - c. All other third party individuals and organisations (such as legal and accounting firms and other firms that provide technical advice including for example engineers, town planners, architects, medical consultancies) be required to register on the Lobbyist Register with the same discloser as required for third party lobbyists, with respect to their activities relating to lobbying.
  - d. All organisations that employ individuals that engage in lobbying on behalf of their employer are required to register under a separate category within the Lobbyist Register.
  - e. Any additional provisions introduced that cover third party lobbyists as a result of this Review are also applied to the individuals and organisations listed above.

The Review raises the notion that “lobbyists are not able to provide **superior access to government decision makers**”. The strong historical evidence suggests that this proposition is incorrect, notwithstanding the efforts over the past couple of months by the Government to limit the access of lobbying firms.

**Access is only one element of the service** offering provided by specialist government relations firms. Whether that access is or is not superior to access by other means is not central to the service. Rather of **central value to a client** is the technical knowledge of government processes including reviewing and forming policies, legislation and regulation; in the budgetary processes; in respect of the myriad of networks that will always exist in government; and in the broader machinery of

government operations. Unlike specialist government relations firms, most organisations have a limited understanding of the complexity that exists in government processes and they do not have the time or interest in becoming familiar with this reality.

The SAS Group considers that transparent and accountable Government requires a framework whereby:

- a) All individuals and organisations have consistent rights of access and ability to influence outcomes of Government as anyone else, including lobbyists, industry groups, unions etc.
- b) There are appropriate mechanisms for monitoring and review. In this regard, the role of the Integrity Commissioner should include the review of cases of complaint whereby individuals and organisations consider they have been disadvantaged through the process of lobbying, whether that is through direct lobbying or engaging professional lobbyists.

## REQUIREMENT TO SIGN THE CODE

**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?**

The SAS Group does not consider that this proposition will enhance the integrity of the system. A review of client firms on the lobbying register reveals that the considerable majority are significant corporations and the suggestion that these firms should sign a 'piece of paper' before they are included on the Register is **simply bureaucratic and administratively inefficient**. There is no justification for the addition of administrative 'red tape'.

Every other jurisdiction in Australia, the USA system and the Canadian system are all **fully electronic** (other than the specific requirements regarding the statutory declarations). The Queensland Government should urgently move to adopt an electronic management system such as is used by the Commonwealth Government.

## STANDARD CLAUSES

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

The SAS Group as a matter of practice includes specific reference to each of the various lobbying codes of conduct for the relevant jurisdiction in its proposal and engagement agreements. It may be appropriate for the Code to require the individual or firm engaged with lobbying to specifically advise the client of the existence of the Code in their engagement agreements.

The SAS Group can identify no other area where there is any justification for Government stipulation of contractual terms.

## GOOD CHARACTER REQUIREMENT

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

The SAS Group considers that the processes contained in the current lobbyist registration and renewal processes (through the application and statutory declaration) are sufficient. All persons engaged in lobbying should be required to execute the appropriate statutory declarations attesting their previous record. This includes those categories exempt from the current Code.

## **ATTACHMENT 1: CODE OF CONDUCT FOR GOVERNMENT RELATIONS ADVISORS IN QUEENSLAND<sup>1</sup>**

The SAS Group supports the development of an industry code of conduct. The following draft code is provided as a recommended basis for negotiation between the industry and Government.

### **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:

- a) Commit themselves to conducting their activities in accordance with public expectations of transparency, integrity and honesty; and
- b) 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.

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<sup>1</sup> The SAS Group has included this Code of Conduct with the permission of the Rowlands Group.

## CODE OF CONDUCT

- a) 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:
  - b) Act with honesty, integrity and good faith and avoid conduct or practices likely to bring discredit upon themselves, their employer or their clients;
  - c) Not undertake work for success fees;
  - d) Apply their skills and knowledge to diligently advance and advocate their clients' interests, without compromising any other obligation under this Code;
  - e) Not make misleading, exaggerated or extravagant claims about the nature or extent of their ability to achieve outcomes;
  - f) 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;
  - g) Not knowingly disseminate false or misleading information and take care to avoid doing so inadvertently;
  - h) Advise clients where their objectives may be illegal or unethical, and refuse to act for a client in pursuit of any such objective;
  - i) Not engage in conduct that is corrupt, dishonest or illegal, or causes or threatens any detriment;
  - j) Identify themselves, their employer (where relevant) and their client when making contact with a government representative;
  - k) Disclose to clients any actual or potential conflict of interest;
  - l) 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;
  - m) 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;
  - n) Promote the elimination of discrimination on the grounds of race, creed, gender, age, location, social status, disability or any other form of unlawful discrimination;
  - o) Keep separate from their government relations activities any personal activity or involvement on behalf of a political party.