22 September 2014

Dr Kerry Schott
Chair, NSW Expert Panel on Political Donations
Via email: donationsreform@dpc.nsw.gov.au

Dear Dr Schott,

The Public Relations Institute of Australia supports the NSW Government working to improve political transparency and accountability. Further reforms of electoral funding regulation may overlap with the interests of more than 1,000 of our members working in business, non-profit and government organisations.

While election fundraising is not the core remit of many professional communicators, the fair and transparent regulation of this activity is relevant to the work of a number of our members. It is also important to ensure reasonable equity for all NSW residents, businesses and community groups in NSW.

Therefore, we submit the following discussion points in line with several terms of reference. Some of these points are just at the idea stage and need further research and review.

We are available at any time for further discussion.

Regards,

Ray Shaw
Chief Executive Officer
Panel TOR point: what controls should apply to the making of donations, such as

i. whether or not particular entities or groups of donors should be excluded;

ii. whether prior approval of a majority of members of a corporate entity or other organisation is required;

Discussion: fundraisers restrain from lobbying

If an organisation or individual fundraises for an individual candidate or political party, this could be viewed as a form of employment service. Therefore it may be worthwhile to explore a requirement for a cooling off period before that fundraiser could act as a representative lobbying the candidate or party on behalf of another organisation (either as an inhouse executive, consultant or volunteer).

This would need to have reasonable respect for restraint of trade in employment law and reasonable levels set in accordance with the amount of funds raised. We have not considered any quantum at this stage, and it may not be relevant if the government moves to a full public funding model.

Discussion: formalise the difference between lobbyist and fundraiser

Lobbying is not fundraising, and very few of our members actually conduct any type of political fundraising as part of their employment.

While we have not specifically surveyed PRIA Registered Communication Consultancies which are listed on the official NSW Register of Lobbyists, there is no evidence to say that fundraising is part of their business models. A formal distinction between the profession of government relations and the activity of electorate fundraising may assist lobbyists from taking the blame for conduct of fund raisers who may have flouted the rules or designed “Pay for Play” events and programs.

So long as individual democratic rights are not impinged, we see little problem with banning fundraising from the activities of any government relations professional or any person who wishes to lobby government. A business on the NSW Lobbyist Register may be excluded from making donations to any party or individual.

People who lobby would need to ensure that they abide by the cap for personal donations.

Discussion: Speed of disclosure and nature of disclosure

The speed of disclosure has an important impact on transparency and effect. In this day of the internet, we urge at least monthly reporting to the public. Systems should be available for online lodgement of reports to ensure it is cheap and simple to comply with regulation.

Another idea which came up for discussion was a ‘blind account’ which could be operated by the NSW Electoral Commission. All donations go through this account, and the nominated candidate or party would receive the money, but not ever be provided with the quantum of the donation, just the published list of all donors.
Panel TOR point: What measures can be put in place to ensure that any caps are effective;

Discussion: commissions

The PRIA opposes success fees for lobbying activity, which are banned in NSW but still allowed in some other Australian jurisdictions. The PRIA raises the concept that perhaps commissions on funds raised for electoral campaigns be similarly banned. This could remove the incentive to raise funds beyond the capped amount.

Panel TOR point: Any amendments to legislation to ensure that limits on political donations and disclosure requirements cannot be avoided through the use of artificial structures or other means.

Discussion: Disclosure of the ultimate source

The PRIA believes there should be a requirement on all organisations to disclose the source of their donation.

The PRIA ethics state in section 9: “Members shall be prepared to identify the source of funding of any public communication they initiate or for which they act as a conduit.”

This overrides clauses for client confidentiality in section 4 of the code “With the exception of the requirements of Clause 9, members shall safeguard the confidences of both present and former employers and clients, including confidential information about employers' or clients' business affairs, technical methods or processes, except upon the order of a court of competent jurisdiction.

Discussion point: Organisational governance

The PRIA believes strongly in meeting community expectations for organisational governance, and this guides an enormous amount of the communication that is developed by companies and community groups alike. There is a strong expectation for transparency and accountability. The PRIA has encouraged members in senior executive and director positions to undertake the Australian Institute of Company Directors courses.

The issues paper discussed the status of political parties, and we believe that organisations, especially those handling money on behalf of others or which are provided with public funding, should adhere to the high standards of governance that are compulsory and equal for all. Clear director regulations should apply.

We are also aware of Local Councils which encourage elected members and senior staff to undertake the AICD program. This could be offered to more elected representatives and senior level government employees.
Discussion: disclosure can help define interest groups

Holding companies should not hide their directors or the identity of key stakeholders. Transparency also discourages astro-turfing where groups are made to look representative by making substantial donations or by running broad campaigns, when in fact they only represent the personal interests of a few people or a few organisations rather than a whole industry. This does not mean that small groups should be unable to run large campaigns, just that the identities of stakeholders is disclosed.

Often a range of diverse stakeholders come together on a particular policy issue and provide assistance to a candidate which supports their views. In this case, provision should be made for holding groups, but ensure that the ultimate stakeholders and contributors are transparent by name. This point would be moot if organisations are unable to donate in the future.

Discussion: Barrier to trade or restraint of trade

Any provisions should not be an unfair barrier to trade or a restraint of trade for that firm or individual contractors. It would assist if clear and reasonable definitions are developed based on fact and research.

It would assist commercial event management, advertising, social media and community campaign providers to ensure that the rules of disclosure are both clear and reasonable when they are selling services to political candidates or organisations.

Panel TOR point: Any other matters relevant to political donations, such as international practices, and their applicability to a Westminster system;

Discussion: National harmonisation and education

The PRIA would urge more practical and immediate concern be placed on Australian practices in different federal, state and local jurisdictions.

It is our experience that many organisations operate across jurisdictions, and it is confusing and difficult to ensure compliance among so many different regulations. There is a clear need for national alignment of all regulations regarding dealing with politicians. The rules should also be the same for all sides of parliament – government, opposition, minors and independents.
Discussion: Changing culture of political practice

We urge the panel to consider the high influence of current political culture. Changing the norms of behaviour requires much more than a change in policy or press releases which target external factors. A culture of evasiveness by ‘willing ignorance’ cannot be accepted or condoned, and cannot be changed instantly.

Changing culture requires rigorous changes in personal behaviour, especially from people in both formal and informal leadership roles within an organisation. It also often benefits from external, highly credible influencers reviewing and monitoring activity.

We therefore urge the panel to review all aspects of political behaviour in relation to funding. The independence that may be offered by the NSW Electoral Commission could provide a sensitive and credible touchstone if properly resourced.

Panel TOR point: The compatibility of any proposed changes with democratic principles;

Discussion: Freedom of speech and expression

It is the right of all people to voice their opinions, and to use a number of techniques to bring about changes in ideas, thinking and behaviour. At the same time, this is balanced by reasonable requirements for truth and respect.

While the oath of office may say that they pledge to serve the people of NSW, there is no formal commitment that Ministers must listen to a range of views and options. They can refuse to meet with stakeholders without any reason given. They can choose who they consult, or if they consult at all. There is currently no onus on Ministers to meet people with differing views or ideas. They can keep the doors and windows closed to community views.

“Pay for Play” must be eradicated, and a clear expectation for equity of access and fair consultation should be codified and become an official commitment for elected representatives.

Discussion: Equity in funding value

We also encourage the panel to look at providing equity in communication tools, rather than just equity in monetary support. The concept of providing an amount of air time or advertising space on popular internet or traditional media may assist with providing an equal baseline of communication.

This will help some candidates who may not have experience in selecting a range of effective communication tools. The buying power of government is greater than even the buying power of a major political party. We do not propose stipulating a single campaign structure for all candidates, merely leaning towards providing some equal baseline service, and other financial resources which can be used according to their preference.
Panel TOR point: The potential for any proposed changes to improve the accountability, integrity and quality of government;

Discussion: Drive openness, not aversion

Some people have reported a level of fear, in particular following the current ICAC investigations, which may be discouraging government representatives from interacting with sections of the public altogether. Fear will drive relationships underground, and inhibit engagement with the broadest possible range of communities on major issues. We believe this is a serious risk, with negative consequences for the accountability, integrity and quality of government.

We urge the panel to ensure that the regulation of associations and others campaigning for electoral representation are in harmony with other regulations and that they are monitored quantitatively and qualitatively by an independent authority to ensure that they have achieved transparency and equity of access.

The PRIA strongly urges the government, perhaps through the NSW Electoral Commission, to provide a clear education module for all candidates to ensure that knowledge of the legislation, regulation and processes is clearly understood prior to standing for election.

2. What is the appropriate regulation of third party campaigners (such as peak bodies, companies or industrial organisations) to run political campaigns and the impact of any proposed models on them;

Discussion point: conflict of interest

Organisations or individual which run a direct political campaign for a party or candidate would then need to assess conflict of interest issues if they wished to lobby such an individual or party within a specified period of time.

Discussion point: freedom of expression

If a third party wishes to raise issues around an election, for instance in national disability, the environment, workforce safety, health or mining, this comes within the area of freedom of expression.

So long as the campaign operates without “Pay for Influence”, the source of the organisation is disclosed, the campaign meets with the regulations covering advertising and truth, then it is the democratic right of NSW Citizens to have their voices heard.
PRIA CODE OF ETHICS

The Public Relations Institute of Australia (PRIA) is the peak professional body serving the interests of its communicators for the past 65 years. PRIA is mindful of the responsibility which public relations professionals owe to the community as well as to their clients and employers. PRIA requires members to adhere to the highest standards of ethical practice and professional competence. All members are duty-bound to act responsibly and to be accountable for their actions.

The following code of ethics binds all members of the Public Relations Institute of Australia:

1. Members shall deal fairly and honestly with their employers, clients and prospective clients, with their fellow workers including superiors and subordinates, with public officials, the communication media, the general public and with fellow members of PRIA.
2. Members shall avoid conduct or practices likely to bring discredit upon themselves, the Institute, their employers or clients.
3. Members shall not knowingly disseminate false or misleading information and shall take care to avoid doing so inadvertently.
4. With the exception of the requirements of Clause 9 members shall safeguard the confidences of both present and former employers and clients, including confidential information about employers’ or clients’ business affairs, technical methods or processes, except upon the order of a court of competent jurisdiction.
5. No member shall represent conflicting interests nor, without the consent of the parties concerned, represent competing interests.
6. Members shall refrain from proposing or agreeing that their consultancy fees or other remuneration be contingent entirely on the achievement of specified results.
7. Members shall inform their employers or clients if circumstances arise in which their judgment or the disinterested character of their services may be questioned by reason of personal relationships or business or financial interests.
8. Members practicing as consultants shall seek payment only for services specifically commissioned.
9. Members shall be prepared to identify the source of funding of any public communication they initiate or for which they act as a conduit.
10. Members shall, in advertising and marketing their skills and services and in soliciting professional assignments, avoid false, misleading or exaggerated claims and shall refrain from comment or action that may injure the professional reputation, practice or services of a fellow member.
11. Members shall inform the Board of the Institute and/or the relevant State/Territory Council(s) of the Institute of evidence purporting to show that a member has been guilty of, or could be charged with, conduct constituting a breach of this Code.
12. No member shall intentionally injure the professional reputation or practice of another member.
13. Members shall help to improve the general body of knowledge of the profession by exchanging information and experience with fellow members.
14. Members shall act in accord with the aims of the Institute, its regulations and policies.
15. Members shall not misrepresent their status through misuse of title, grading, or the designation FPRIA, MPRIA or APRIA.

Amended on 15 July 2009, this code of ethics supersedes all previous versions.

Penalties for breaches

The following penalties may be imposed for breaches of the Code of Ethics:

1. censure
2. a fine
3. suspension of membership of the PRIA for a specific period
4. expulsion from membership of the Institute

(Where an offender is punished by a fine, suspension or expulsion, the offender’s name and the penalty imposed shall be suitably publicised.)