HawkerBritton
Government Relations Strategy

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000
C/O: EGC@parliament.qld.gov.au

RE: INQUIRY INTO THE REPORT ON THE STRATEGIC REVIEW OF THE FUNCTIONS OF THE INTEGRITY COMMISSIONER

To the Committee Secretariat,

Thank you for the opportunity to provide a submission to the inquiry into the report on the Strategic Review of functions of the Queensland Integrity Commissioner.

In preparing this submission we have considered the first policy principles that underline the existing regulation of the government relations consulting sector, where reform opportunities exist and where functions can be completed more efficiently and effectively.

This submission largely mirrors our contribution to the review conducted by Mr Yearbury PSM. Our submission largely covers the review's recommendations eight through eighteen, with some general observations and further reform ideas suggested.

As we did to the review itself, we have provided several recommendations for the Committee's consideration. These are consistent with recommendations that Hawker Britton has made over many years to reviews in other jurisdictions around Australia.

Hawker Britton supports a well-functioning government relations sector that is strongly regulated with an emphasis on transparency, accountability and enforcement. The purpose of which is to drive better public policy outcomes for the state.

We trust our submission and recommendations are of value to the committee.

Kind regards,

Elliot Stein
Director
Hawker Britton

Table of Contents

Hawker Britton – About us

Hawker Britton is one of Australia's largest government relations firms and operates in all Australian jurisdictions. Founded in 1997, we offer a comprehensive level of expertise in federal, state and territory government engagement, along with advising companies on issues, policies and commercial matters related to Australian governments.

Government relations specialists play a role in a modern democracy by bringing a diverse set of views to government. Government engagement on behalf of clients (and pro bono organisations) is a two-way process, providing organisations with the opportunity to make their case to government and providing government with valuable information to inform its decision-making processes.

While third party and in-house government relations professionals operate in the interests of their employer and clients, they also facilitate a vital part of the policy process. The policy and decision-making process is not, and cannot be, carried out in a vacuum. It needs to be properly informed by outside and diverse interests. Government relations specialists ensure that those divers voices are at the table.

Over the past few years, the industry has come under greater scrutiny Australia wide. Hawker Britton continues to strongly welcome these developments. Professional government relations experts should operate in a transparent environment governed by an appropriate set of regulations. Such an environment can help build public confidence in public policy processes.

Hawker Britton acknowledges the importance a code of conduct has in guiding the expected standards of conduct. Not only is a code of conduct important in maintaining public expectations of transparency and integrity in government, it may also serve to create a framework of expectations for third party representatives and their clients.

HB

Response to Review recommendations

	Review Recommendation	Hawker Britton response
8	To enhance transparency in respect of contact by employees of organisations and associations who represent that entity's own interest: a) the government provide more specific criteria as to the information that must be included in Ministerial diaries as to the purpose of the meeting, including the possibility of a pre-set menu of options, and b) the Leader of the Opposition's diary contain similar detail in respect of meetings with those employed within organisations and associations who represent that entity's own interests.	Support, the current operation of the contact log is not fit for purpose
9	While not broadening the definition of 'lobbyist' in Section 41 of the Act, provide clarification as to the meaning of entity to include an individual, organisation or related party (as defined in the ASA 550 Auditing Standard).	Agree and extend, we advocate for an expansion of the definition under s41
10	For the avoidance of doubt, Section 44 of the Act be amended to include reference to Statutory Officers as responsible persons for reporting unregistered lobbying activity.	Not opposed
11	To improve its effectiveness, the Act be amended to make unregistered lobbying activity an offence, together with penalties commensurate with those in other legislation for acts of deception intended to subvert the integrity of public administration.	Support
12	To enable auditing of lobbyists records and monitor compliance, the Act be amended to require government representatives or Opposition representatives to provide meeting records and other relevant information when requested by the Integrity Commissioner.	Not opposed
13	To improve the efficiency of the regulatory regime: a) the Act be amended to enable the Integrity Commissioner, to seek an explanation and/or issue a direction to take remedial action about a compliance matter, without first having to issue a show cause notice, and b) retain the "show cause" provisions to deal with more serious instances of non-compliance.	Not opposed
14	To improve the effectiveness in the regulation of lobbying: a) the Act be amended to provide for the	Support, warranted the relevant bodies are also

	Integrity Commissioner to refer matters to the CCC: i. when there is information available that the activities of a registered lobbyist may offend the provisions of Section 15 of the Crime and Corruption Act, or ii. an individual or entity is allegedly undertaking lobbying activities (as defined by the Act) but who are not registered (i.e., unlawful lobbying), b) the Integrity Commissioner be given powers to warn lobbyists upon becoming aware of alleged misconduct without reference to the CCC, and c) an assessment be made as to whether consequential amendments to the Crime and Corruption Act are necessary to enable the investigation of alleged corrupt activity on the part of a lobbyist, (as distinct from the public official) and any other matter referred by the Integrity Commissioner as constituting serious misconduct that warrants investigation.	adequately resourced to conduct these tasks
15	To improve transparency in relation to the nature of contacts with government representatives and Opposition representatives, lobbyists be required, when entering details on the Lobbyist Register, to provide a short explanation of the subject matter when selecting the 'other' category.	Support
16	To ensure possible conflict of interest situations are properly addressed where a company is supplying services to government but also works for non-government clients, the Queensland government Supplier Code of Conduct be amended to provide that: a) when submitting a proposal to undertake work for the government, a firm be required to make a specific statement addressing Item 3.2 (Managing conflicts of interest) and attach a copy of the company Conflict of Interest policy where they have one, and b) Conflict of Interest be added as one of the due diligence checks to be made as part of the evaluation process.	Support, and if applicable, to be captured by the expanded definition under s42
17	In relation to lobbyists working in an advisory capacity to political parties, the Integrity Commissioner update the Lobbyists Code of Conduct to include a specific Conflict of Interest Policy that could be referenced as part of the Ministerial Code of Conduct to which Ministers commit, and lobbyists as part of their registration.	Support, this addresses areas of reform identified by us below

18	The Act provide for the Integrity Commissioner to issue directives from time to time concerning the Section 7.7 application of policies as circumstances require.	Not opposed

19	The Integrity Commissioner continue to develop education material as this can reduce the demand on the office to respond to requests for basic information, freeing time and resources to conduct the advisory and lobbyist regulation functions.	Support
20	The expertise and knowledge of the Integrity Commissioner be used to build capacity and competency across the public sector by: a) continuing to make presentations to Statutory Boards and agency Chief Executives regarding best practice in meeting community expectations in respect of integrity in public administration, and b) continuing the education, training and professional development of those in public sector agencies who provide advice to employees regarding integrity and ethics matters.	Support
21	To improve understanding of the requirements of Chapter of the Act (Regulation of Lobbying Activities), its intent and obligations, the Integrity Commissioner: a) develop educational materials tailored to needs of registered lobbyists and relevant public officials and undertake training sessions, and b) create a compulsory training module that promotes best practice within the lobbying industry active in Queensland, and c) require successful completion of the module by all currently registered lobbyists and those who intend to register, as a condition for registration.	Support, see policy recommendation below on implementation suggestion

23	The Integrity Commissioner and the DPC ICT team complete, as a priority, work being undertaken to scope an upgrade or replacement of the Lobbyist Register platform, and once a solution has been identified that funding be given favourable consideration to enable its prompt implementation	Support

Policy recommendations

Recommendation one – expand the definition of Lobbyist to include all individuals with regular commercial contact with Government on behalf of a third party, their company or organisation or their commercial clients. These individuals would have a positive reporting requirement to disclosure their contact with government on the contact log.

Recommendation two – consider what conflict avoidance mechanisms are required to mitigate risk where government engages a commercial advisory entities, such as external consultants, who also have third party clients and what regulatory requirements should be placed on them.

Recommendation three – Governments should continue to strongly invest in public service capacity and expertise, limiting the use of consultants and providing the best possible training, renumeration and support to great the strongest possible public service.

Recommendation four – develop a more modern system of restricting the use of information obtained through government service if an employee moves into the private sector – including reviewing the 'two-year rule'.

Recommendation five – It is best practice for third party representatives, in-house employees and private consultants within the government relations sector to maintain clear ethical walls between political activity and commercial activity. These may be considered for registering with the Integrity Commissioner.

Recommendation six – establish a Queensland Pro Bono Clearance House to sit within the Lobbyist Register system

Recommendation seven – The Integrity Commission should create a compulsory training module for all registered government affairs consultants, successful completion of which is required for registration. The Commission should explore the establishment of a registration fee.

Recommendation eight – Conduct a refresh of the regulatory system to ensure the Code and its mechanisms reflect current laws and processes

Introduction

We agree with the findings of the Yearbury report, that Government relations professionals - both in house and third-party consultants - play an important role. They provide insights and connections between governments, business and the not-for-profit sector. They enable government to both talk and be heard by business and for business to clearly communicate their position to government.

John Warhurst, Professor of Political Science at the Australian National University, describes third party government relations specialists as

> '*…technicians, like lawyers and accountants, who perform a fee for a legitimate service*.'[1]

A UK House of Commons Public Administration Select Committee in late 2008, defined the practice of lobbying in order to influence political decisions as:

> *'A legitimate part of the democratic process. Individuals and organisations reasonably want to influence decisions that may affect them, those around them, and their environment. Government in turn needs access to the knowledge and view that lobbying can bring.'*[2]

The Yearbury review stated:

> *'Lobbying is a legitimate part of the process of a democratic system of representative government. It is predicated on individuals, interest groups, businesses and whole communities being able to express their wishes to their elected representatives and the government of the day and be heard in relation to issues that affect them. Lobbying, when it is conducted ethically, can contribute to outcomes that are in the public interest and/or deliver a public good.'*[3]

Not unlike subject matter experts in other fields, government relations professionals clearly and plainly explain government processes, people and policy to time poor businesses and organisations focused on their key task. While our democratic system is built on the basis of openness and accessibility there are few professionals who have the bandwidth, time or training to follow the public policy cycle in all its stages and engage appropriately.

Businesses and organisations focused on the operations of their companies will naturally seek to either build internal capacity to track and engage with government or look to engage third party consultants to perform that task for them.

---

[1] Warhurst, J. (2008). "Regulating Lobbyists: The Rudd Government's New Scheme." Public Administration Today (July September).

[2] (2008). Public Administration Select Committee. H. o. Commons. London, The Statutory Office of the United Kingdom Volume 1.p5

[3] Strategic Review of the Integrity Commissioner's Functions, September 2021, p 5

However, as in any sector there is room for improvement. It is our assessment that the overall government relations sector in Queensland is inconsistently regulated and is in due for reform. The application of existing policy is not always applied consistently, enforcement is low and large grey zones exist.

There are significant areas ripe for reform in the sector – from capturing the full scope of third-party consulting and engagement through to better training and obligations on Government to disclose external engagement. Over time the first policy principles of increasing transparency on policy making have been diluted through a focus on third party consultants.

In addition to expansion and clarity around existing regulations we suggest new measures – including a Pro Bono clearing house – upping the professionalism and accessibility of the sector as a whole and greatly improving the public policy process in Queensland.

Transparency and disclosure.

Hawker Britton strongly supports the New South Wales ICAC definition of a lobbyist as "someone who engages in lobbying activity in return for payment as part of his or her employment, whether or not employed primarily in lobbying"[4].

This definition reflects the reality in the industry that individuals undertaking identical lobbying activities are engaged in many different ways. This is an efficient definition for the purposes of examining government regulatory structures in that it relates to the *activity* of lobbying (from which any risk to probity arises) rather than the business model of the lobbyist which is largely unconnected to any probity risk.

Hawker Britton has consistently maintained existing lobbyist regulatory regimes will not fully meet the desired outcome on lobbyists and government representatives if only third-party lobbyist firms are included.

The Victorian Government has moved in this direction, requiring the registration of in-house Government Affairs Directors.

Over past decades there has been a shift towards increasing regulation of third-party consultants. Hawker Britton has welcomed and encouraged this, but it has not gone far enough to achieve the desire policy goal.

There are two reasons for the need for greater transparency on the government relations sector.

1. Providing government officials with clear line of sight into the commercial interests of third-party government relations specialists - namely being able to answer the question "on whose behalf is this individual approaching me for information?"

2. Providing the public with information as to who is engaging with government, providing insights to the development of public policy, the influences and consultation taken on it.

These twin public policy goals for the sector have been achieved through two broad mechanisms to date in Queensland:

1. The registration of third-party consultants and a public register of clients attributed to each consultant.

2. A public contact log of all interaction of third-party consultants and government - noting the client, broad topic and date of contact. There is a complimentary process of the release of ministerial diaries to show where contacts have occurred with a Minister (or Leader of the Opposition) directly.

[4] ICAC, *Lobbying in NSW: An issues paper on the nature and management of lobbying in NSW, p.9*

Hawker Britton believes that it is through a narrow cast application of these policy goals that has allowed for failures of transparency and accountability in the existing system.

By limiting the public disclosure of contact with government to only third-party representatives there is a large system of engagement of in-house government relations specialists, unregistered consultants and a murkier category of government contracted consultants retaining external clients (addressed further below).

The two policy goals - transparency for government and transparency for the public - are not addressed by the two policy responses - a public register and a public contact log - if they only apply to third party representatives.

On the first issue, transparency to government - a public register of clients clearly tells government whom a third party is working on behalf. By definition this isn't required for an individual working "in-house" for an organisation. However, it currently doesn't capture any employee of an accounting or consulting firm who might be seeking information for a broader suite of clients and engaging with government without disclosure.

On the second policy goal - transparency to the public - the contact log as it currently stands masks the majority of commercial interaction with government. Given government has determined that it is important for good, transparent policy making for a public contact log to be released, it naturally follows that this should apply to all commercially motivated contact with government, not just third-party representatives.

The goal is to provide the public with a clear understanding of what commercial interests have contacted government, to whom, on what topic and on what date.

Hawker Britton strongly supports this, as such supports the contact log reporting mechanism to cover all external contact with government.

There will always be legitimate reasons for an organisation or individual to be excluded from such a scheme, including on resourcing grounds. These should be considered by the Committee but be the rare exception.

Further, where contact with government is captured and disclosed through existing means this should not require 'double reporting'. For instance where Government or parliamentary committees call for public submissions, providing these should not be required for disclosure on the contact log. Statutory or formally constructed mechanisms for engagement – a publicly announced Minister's roundtable on a specific policy area (a great deal of which exist in the primary industries space for instance) for example, should also not attract reporting requirements.

The first principle for disclosure should be to require external unsolicited contact with government to be disclosed as to provide the public with transparency into policy development process.

Recommendation one – expand the definition of Lobbyist to include all individuals with commercial contact with Government on behalf of a third party, their company or

organisation or their commercial clients. These individuals would have a positive reporting requirement to disclosure their contact with government on the contact log.

Unregulated third-party representatives

As noted above, in addition to third party representatives such as Hawker Britton, the government relations advisory sector is ballooning with unregulated shadow consultants. This is canvassed in the Yearbury report in footnote 25.

The limitation of regulation to only consulting third party firms creates a perverse incentive for the same category of individuals to carry out the same activities in a totally unregulated environment outside the disclosure of the current scheme.

Shadow consulting can be achieved by an individual by:

- Working for a single organisation as an employed in-house lobbyist, government relations specialist or corporate affairs adviser.
- Working for more than one organisation as a part-time employed in-house lobbyist in each organisation.
- Carrying out lobbying activities while working for a firm specifically carved out of the regulation.
- Working for a member-based organisation and carrying out lobbying activities on behalf of the members of that organisation.
- Working for an industry organisation carrying out lobbying activities on behalf of that industry.

It is of particular concern when companies contracted to government to provide policy support retain connectivity to their other commercial client services. This naturally creates conflicts of interest and the ability of these entities to trade off the information obtained within and during their period of government service.

For example, there are instances where government will procure external policy support from large accounting firms who also maintain diversified government advisory practices.

Our desire would always be for a better staffed, better trained, higher capacity inhouse public service. A better public service would naturally lead to less reliance on external consultancy firms being called on to develop public policy for government departments.

We believe in the appropriate renumeration of public servants, the better training of public servants and strongly encourage a closer connectivity between our universities and the public service. Queensland's universities, supported by bodies like the Australian New Zealand School of Government, should be producing the best possible public service in Australia.

However – we acknowledge that the Queensland Public Service is not currently equipped in that way. The decimation of 14,000 public servant jobs under the LNP Government of 2012-2015 hollowed out public service policy making capacity.

The reality is, during the Newman years, the top tier minds and policy experts of the public service simply took large voluntary redundancies from George Street, walked down to

consultancy firms on Eagle Street and were contracted back the next day – at far higher cost to government.

While the retention of external consultants is required from time to time, the over reliance on external consultants for the development of public policy has created an exposure for the Government if those firms retain their own private clients.

Currently, other than Cabinet confidentially agreements, we believe that there is nothing preventing an external consultant being engaged by government to perform a public policy development task and informing their own private commercial clients on government thinking, process and policy development. There is nothing preventing, nor any disclosure around, these firms further monetising their government contracts to provide advisory services to private clients for their own commercial gain. There is no register of what conflicts and clients held by these firms, nor any restrictions on their use of information for any period of time after a government contract is completed.

There is exposure for these consultants to 'dip' in and out of government – taking with them sensitive insights on government thinking and policy development and sharing it with clients for external gain. There is no register of these entities, which have government contracts and who their clients are.

We believe this should change.

Recommendation two – consider what conflict avoidance mechanisms are required to mitigate risk where government engages a commercial advisory entities, such as external consultants, who also have third party clients and what regulatory requirements should be placed on them.

Recommendation three – Governments should continue to strongly invest in public service capacity and expertise, limiting the use of consultants and providing the best possible training, renumeration and support to great the strongest possible public service.

The 'two-year' rule

It has been our experience in the use of the existing rules that there is significant ambiguity in the application of the system of regulations.

The enforcement of the 'two-year rule' – preventing a former ministerial employee from engaging government on matters of which they were responsible for within a period of two years – is one such area.

We believe it would be prudent for the definition of direct responsibilities to be more clearly defined. Further, this review should consider how best to apply this rule to all former government employees, and further to expand to a broader definition of lobbyist or consultant as discussed above.

Our interpretation of the policy intent of the two-year cooling off period is to prevent an individual taking confidential knowledge from government and into commercial gain. We strongly support the policy intent of restricting the monetisation of confidential government information.

However, the current two-year rule is a blunt tool.

While there are black and white applications, such as a former employee using knowledge of a near completed tender process within government to advise competitor entities on how to secure a contract, there are more murky areas.

For instance, it is currently legal for an individual to have knowledge of long running government policy process – including the awarding of tenders – waiting two years and then advising on that process. Whilst the majority of public policy and tender processes would be completed within two years this is not always the case.

Further, the restriction should be extended to include all government employees, not only Ministerial staff. The policy design and commercial procurement knowledge and intelligence held by senior public servants would equal (if not more) than that of Ministerial staff, demonstrating the need for the expansion of this restriction.

It is reasonable and valid for an individual skilled in the practice and processes of government to seek private employment utilising those skills. Just as a government lawyer skilled in the processes of the legal system would not be prohibited from using those skills in the private sector.

We do not believe the intent is to prevent an individual from taking knowledge and connections of personal within government. If this was the policy intent, then no period of cooling off time would ever suffice as government personnel do not necessarily move on within a certain period.

What is required is a more nuanced tool to address the public policy challenge.

It is not unique to the government sector for restrictions to be placed on future employment after a period of work. For example, non-compete clauses in private contracts that extend beyond the life of the contract or face legal penalty currently existing in many sectors, including in the law.

We believe that there is capacity within the regulatory system for a smarter application of the policy intent. The current two-year rule being applicable only to third party representatives is a blunt tool that again misses large swathes of the sector and of private entities and simultaneously captures people unnecessarily.

More enforceable legal contracts matched with clear training on exit from government service is one such way that the Commission could consider. For instance, an individual on leaving government would need to clearly identify the policies and procurement issues they held information about, document them and register those areas with the Integrity Commissioner. These more narrowly defined issues would be restricted for employment while they were still 'live' within government but not an entire portfolio of broad responsibilities.

Recommendation four – develop a more modern system of restricting the use of information obtained through government service if an employee moves into the private sector – including reviewing the 'two-year rule'.

Support for Party Units

Active and fulsome participation in the political sphere from individuals working voluntarily is a critical part of our democratic process. We should be supportive and encouraging of people who wish to be involved in the political system at all levels.

Active participation in our democratic process is a good and healthy function. We know that political parties of all stripes rely on motivated volunteer bases from all walks of life. This is to be encouraged as part of a well-functioning democracy.

Hawker Britton supports the rights of its staff to be actively involved in political activities and encourages them to do so by providing flexibility in working hours and leave to assist in accommodating such activities where appropriate.

However, there is an important for organisations to maintain boundaries between their political support and their commercial interests. Primarily through placing boundaries between the development of policy for governments, oppositions or political parties and the furthering of client interests. While individuals involved in voluntary political campaigning will always have 'day jobs' it is important that any commercial interests be separated by the business of political campaigning as it applies to narrowcast policy development.

In our business, Hawker Britton requires that any of our commercial or client interests are separated from Party political activities as part of our conflict of interest approach.

This may include through the establishment of clear "ethical walls". Whereby commercial interests are separated from political campaigning during a set period amongst employees of a third-party entity.

In this instance one such mechanism for resolving conflicts and perceptions would be that voluntary work on a political campaign by a third-party consultant is clearly divulged, registered and maintained by the Integrity Commissioner along with the mechanism for separating such work from commercial business dealings during that period.

Recommendation five – It is best practice for third party representatives, in-house employees and private consultants within the government relations sector to maintain clear ethical walls between political activity and commercial activity. These may be considered for registering with the Integrity Commissioner.

Pro Bono Clearing House

Hawker Britton's practice has always aimed to engage a proportion of its clients pro bono.

This has been in response to the reality we acknowledge there are many worthy causes, charities and organisations who cannot afford the resources or services of professional government relations specialists. We regularly take on pro bono work that aligns with our value system.

We propose a reform to include a system allowing charities and non-profit organisations free access to the professional services of companies on the Queensland Register of Lobbyists.

This practice is similar to other professional service industries. Under this system appropriate charities and not-for-profit organisations would be allowed to register their request for assistance and those individuals on the register would be notified.

This formalised process would allow a wider range of organisations to access assistance and reassure the public that those on the register are providing professional services on the same terms as other industries.

Applications would need to be examined for merit and other considerations, such as the prospects of success, the applicant's circumstances, the alignment with a firm's value set and the volume of pro bono work already performed by a lobbyists.

Recommendation six – establish a Queensland Pro Bono Clearance House to sit within the Lobbyist Register system

Ethics training

Hawker Britton has long advocated for compulsory ethics courses for all registered government relations specialists.

This training could be undertaken and accredited by one or many of our universities or the Australian New Zealand School of Government and would give the community greater confidence that those on the register understand their obligations and are trained to offer their services at the highest standards.

To provide further confidence to the public, this training could also be made available to Members of Parliament, Ministers, their staff and public servants.

To fund such activities, this could open the door to the establish of a registration fee for government relations specialists to register with the Government, which would have the added benefit of reducing the large numbers of dormant entities and individuals maintained on the register.

Recommendation seven – The Integrity Commission should create a compulsory training module for all registered government affairs consultants, successful completion of which is required for registration. The Commission should explore the establishment of a registration fee.

Minor amendments

In preparing this submission we have identified some minor technical amendments in the composition of the Code and regulatory system to bring to the attention of the Commission.

These include:

- Within the Lobbyist Contact Log there is reference to a defunct Act, the Sustainable Planning Act 2009
- Within the Contact Log the addition of a drop-down box to select from declared clients would ensure uniformity of declarations and to ensure all clients are registered correctly
- There is no guidance on the use of names, titles or role within the Contact Log – leading to large variance in levels of declaration between users of the Log
- Other disclosure registers, for example the New South Wales register, requires an ABN to be attached to each client to ensure the correct trading names are captured. This should be explored.

Recommendation eight – Conduct a refresh of the regulatory system to ensure the Code and its mechanisms reflect current laws and processes