CRISIS & COMMS CO
STRATEGY I MEDIA I PUBLIC AFFAIRS

Economics and Governance Committee
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Dear Committee

SUBMISSION TO ECONOMICS AND GOVERNANCE COMMITTEE ON THE STRATEGIC REVIEW OF THE QUEENSLAND INTEGRITY COMMISSIONER 2021

On behalf of Crisis&Comms Co, I would like to thank you for the opportunity to make the following submission to the Committee on the Strategic Review of the Queensland Integrity Commission (the Integrity Commission) pursuant to the *Integrity Act 2009* (Integrity Act).

The following submission will be confined to the regulation of lobbying activity in Queensland by the Integrity Commission under the Integrity Act.

The firm's principal, who is the author of this submission, has worked in the fields of public affairs and communications, particularly in the Queensland and federal jurisdictions, since 2008.

Crisis&Comms Co is a Queensland based strategy, media and public affairs firm, established in January 2020.

First Principles

At its most basic level, public policy is made up of:

- An intent, or outcome that is desirable;
- A policy, which is the way that the outcome is to be achieved;
- A method of implementation - through legislation and administrative activities (generally authorised by legislation or within inherent powers).

Lobbying regulation is intended is to provide for regulation of lobbying activity in line with community standards.

The policy purposes of lobbying regulation are generally framed as creating a level of transparency and monitoring the interactions of lobbyists with government representatives, and requirements to abide by ethical standards in relation to their activity, including ensuring lobbyists act ethically and honestly, and that they avoid conflicts of interest.

Implementation is through the Integrity Act and the Lobbyists Code of Conduct, which require lobbyist registration with the Integrity Commission, declaration of who a lobbyist represents when they contact a public official, and publication of contact information.

As public policy the current regulation is generally simple and effective, within its current scope.

While subject to common vagaries of interpretation, and given it applies to a very small group of active public affairs practitioners, there has been limited need or value in creating extensive additional guidance.

There are however two key areas where the current system is limited in its effectiveness: it scope of application, and effective enforcement and education.

CURRENT REGULATION SCOPE AND IMPLEMENTATION

Scope of Lobbying Regulation: an anti-competitive and insufficient framework

At present the direct government engagement or lobbying activities of many organisations are essentially unregulated by the Integrity Commissioner and are therefore not transparent.

This is because organisations, particularly those exposed to highly regulated industries (eg utilities and operators of large and critical infrastructure), may directly employ an in-house government relations or lobbying capability. As a result, these organisations are not captured by the requirements of the Integrity Act with respect to lobbying activities. Their meetings are not declared or published. The potential for scrutiny to which third-party lobbyists are exposed, including from the media and the Parliament are very much reduced.

Lobbying regulation in Queensland is almost entirely aimed at regulating the activities third-party lobbyists. Third-party lobbyists are generally engaged by clients who do not have the resources to bear the cost of a full-time ongoing employee who possesses the knowledge, experience and policy and other skills required to effectively engage with government.

This means greater regulation on the activities of smaller, less well-resourced organisations with respect to government engagement. This is clearly an anti-competitive and perhaps a perverse outcome.

Furthermore, while it is not possible to make a proper comparison (as direct company lobbying is not declared) it is very much likely to be the case that lobbying contact by in-house lobbyists forms the vast majority of overall lobbying activity in Queensland.

In other words, Queensland's measures around lobbying regulation do not capture the vast majority of lobbying activity for commercial and other purposes.

At pages 46 and 47 the Report makes the case that regulation of direct lobbying activity would (i) require significant and disproportionate resources, (ii) that thresholds and

exemptions would make regulation more costly and (iii) that direct lobbying activity is resolved through publication of Ministerial diaries (with apologies for paraphrasing).

Ministerial diaries provide extensive insight into the day-to-day activities of Ministers. Across the Government, the fact that Ministers spend a limited amount of time meeting with private companies is perhaps instructive that publication of greater detail of their meetings would not provide much additional insight or transparency with respect to direct lobbying by government. As such **Recommendation 8** would provide limited additional transparency with respect to lobbying activities.

The Report takes the position that the resources required to regulate direct or in-house lobbying activity by organisations are greater than can be justified. This is not considered a desirable or sustainable policy position.

It is likely that current lobbying regulation covers a small minority of all lobbying activity. Further it focuses on smaller organisations who engage a third-party lobbyist due to insufficient resources to directly engage a lobbying capability, or because they cannot justify an internal and ongoing government relations cost and so prefer an external resource for this kind of business support.

Contrary to the view stated in the Report, it is possible to set simple thresholds on the companies whose lobbying is being regulated. A very simple method of doing so is the small and medium, versus large company thresholds used by the Australian Taxation Office in income tax assessments. This is known information and extremely simple for companies to apply. Equally charitable organisations and not-for-profits can also be excluded. For consistency, the same methodology might indeed also be applied to the clients of third-party lobbyists.

Consistent regulation of lobbying activities of organisations seeking to influence government decision making, whether in-house or third-party, is the only logical and sustainable way forward.

Substance over Form: enforcement and education

The concept of substance over form is central to the implementation of most forms of regulation of professional conduct, including with respect to lobbying activity. The concept goes to the importance of considering and interpreting lobbying *activity* undertaken and considering whether specific activity of a professional is 'caught' by the regulatory regime.

It means that what a person calls themselves is less important than what they do.

Since inception, Queensland's lobbying laws have been clear on the activity being regulated: "lobbying activity". This is defined by section 42 of the Integrity Act: "contact with a government representative in an effort to influence State or local government decision-making."

Unfortunately, outside of the lobbying community, the Office of the Integrity Commissioner and key government officials, there is a limited awareness of this specific definition. As a result, a person engaging with a government official, may present themselves as a 'communications professional', 'lawyer', 'accountant' or some other category of consultant, with limited challenge – even if their conduct is actually within the definition of "lobbying activity".

The tendency to recognise and consider form (what they call themselves) over substance (their conduct) has two key implications.

Some government officials consider all contact by a person listed on the lobbyist register to be lobbying activity. This may result in inconvenience, and at worst misreporting of lobbying contact.

A more serious issue is that individuals who put themselves forward as something other than a lobbyist, but who are actually undertaking lobbying activity, while not registered, are able to skirt Queensland's lobbying regulation.

In this respect, two key responses are required.

A greater level of ongoing education and enforcement in relation to the prohibition against lobbying by unregistered entities (Integrity Act s 71). Education should be provided both to registered lobbyists and to government officials.

Simplification of the definition of lobbyist in the Integrity Act (s 41) by removing the incidental lobbying activity exemption which relates to third parties representing the interests of private clients. This exemption allows unregulated lobbying activity to be undertaken by any professional, and therefore incentivises structures to evade the intent of Queensland's lobbying regulation framework.

The exemption of incidental lobbying activity, moreover, creates a swathe of uncertainty among public servants doing their best to comply with the legislation.

COMMENTS ON OTHER RECOMMENDATIONS

Recommendation 13

The ability of the Integrity Commissioner to issue correspondence seeking explanation from a registered lobbyist is a reasonable and proportionate proposition.

The idea however that the Integrity Commissioner should be able to make a direction to a registered lobbyist (it is not clear how broad this direction might be), without natural justice, is quite another matter. Issuance of a show-cause notice in relation to non-compliance should remain a requirement prior to any direction or enforcement action.

To further enhance the Integrity Commissioner's compliance function, the office should be in a position to impose a framework of escalating sanctions. These would range from an

initial reminder of compliance obligations, through to a lifetime ban from registered lobbying. An enforcement framework which sets escalating sanctions should be published.

The issue of the application of sanctions is an area where significant discrepancy may exist under the current system which only regulates third-party lobbyists.

Under the current definition of lobbying activity, a third-party lobbyist banned in Queensland, could nonetheless return to lobby government in an in-house capacity. Any offence alleged against a third-party lobbyist simply does not apply to the same activity undertaken by in-house lobbyists. Honest and ethical conduct of those lobbying in Queensland is best served if offences, sanctions, and bans on lobbying, equally apply to in-house and third-party lobbying.

Recommendation 14

It is not clear that a specific power is required to enable the Integrity Commissioner to refer matters to the CCC as proposed under Recommendation 14(a).

Recommendation 14(b) is consistent with a desire to ensure best outcomes with the lowest administrative and resource expense and should be supported.

Recommendation 15 and 18

The Report identifies potentially an overuse of the "Other" and "Commercial-in-Confidence" explanations for government meetings. This is a recommendation for a systemic change and greater complexity without a proper understanding of the cause(s) of potential overuse of these terms.

A preferred course of action is for the Integrity Commissioner to provide explanations and education to lobbyists to ensure these categories are being properly used.

This could be in the form of a directive "concerning the application of policies" as set out in Recommendation 18, which is a common-sense recommendation and is supported.

OTHER COMMENTS

Are there benefits from lobbying for Queensland?

The preamble to the Lobbyists Code of Conduct states:

> *Professional lobbyists are a legitimate part of, and make a legitimate contribution to, the democratic process by assisting individuals and organisations to communicate their views on matters of public interest to the government, and so improve outcomes for the individual and the community as a whole.*
>
> *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.

Most lobbyists have undertaken public service at some time, through election to political office, working for a member of parliament or within a local, state or federal bureaucracy. The great majority of public servants are drawn to public service to create benefit for the community. Many lobbyists operate with the same desire - to support projects which will also result in a community benefit, albeit from a position outside of government.

Whether it be for better delivery of health care, supporting the development of new technology, or creation of a new industry creating jobs, and many other examples, lobbyists perform a role in bringing new ideas to government.

The work of lobbyists can result in substantial benefit for the community. Industries are attracted, built, and may choose to stay in Queensland as a result of direct engagement with senior government officials, in some cases supported by lobbyists.

In other cases, the ability of a lobbyist to prosecute an argument might unlock consideration of a better way to deliver a public service.

A key benefit is the ability of an effective lobbyist to interpret and translate interactions between client, officials, stakeholders and decision makers. Government and business focus on different metrics and operate from different frames of reference. Lobbyists can enhance communication, promote understanding and facilitate meaningful exchange.

The public and regulators are right to desire and expect appropriate transparency. At the same time, regulation should be balanced to ensure the best outcome for the State.

Future Regulation

Lobbying regulation in Queensland has been almost solely focused on third-party lobbying, with very limited impact on the activities of others seeking to engage with and influence government.

It is considered that there are four key policy lenses for future lobbying regulation:

1. Regulation only applied to third-party lobbyists (status quo).
2. Inclusion of in-house lobbying activity within the present regime so that it applies to the activities of “employees” undertaking lobbying activity.
3. Extension of the requirements of the Integrity Act to all “lobbying contact” with government, whether it be as an individual, third party, in-house, or for a community purpose.
4. Creation of a ‘government contact’ system which would require all contact with government officials to be noted, recorded and published.

The current regulatory regime as it applies to third party lobbyists is out of balance. As it presently stands it creates a disadvantage for smaller organisations who see value in

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engaging directly with government. Solely regulating third-party lobbyists is unbalanced and unjustified.

Options 3 and 4 as set out above are unjustified and unworkable, creating a massive cost and bureaucratic workload for limited, if any, community benefit.

With respect to any possible change to lobbying regulation, an extension of the current rules to in-house lobbyists presents a range of advantages, including:

- Aligns to the policy intent of lobbying regulation to provide for transparency, and honest and ethical behaviour,
- Regulation is likely to be proportionate to the potential transparency benefit that might be achieved,
- Captures what is likely to be the majority of lobbying activity,
- Imposed on organisations with the resources, policies, and procedures to properly implement those requirements, and
- Places smaller organisations, who are unable to directly employ a lobbying capability, on a level playing field with respect to their engagement with government.

Conclusion

The present regime imposes a set of regulations on third-party lobbyists with the intent of ensuring transparency and conduct in line with community expectations.

There is no clear reason why the same intent should not be applied to directly employed, in-house lobbyists and it is considered that this would be an effective, manageable, and proportionate extension of Queensland's current lobbying regulation.

Greater education and enforcement of the substance of lobbying activity, while removing complex exemptions for incidental lobbying activity, will improve understanding and effectiveness of Queensland's lobbying regulation.

Thank you for the opportunity to make this submission.

Best regards

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