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SENSITIVE

31 January 2022

Mr Linus Power MP
Chair, Economics and Governance Committee
Parliament House

By email: egc@parliament.qld.gov.au

Dear Chair

RE: CCC Submission – Inquiry into the Report on the Strategic Review of the Functions of the Integrity Commissioner

Thank you for your email of 18 November 2021, inviting the Crime and Corruption Commission (CCC) to make a submission in relation to the above mentioned inquiry. This submission will only deal with certain aspects of Mr Yearbury's report (the Report).

General comments

The CCC notes and endorses the first paragraph of section 3.2.1 of the report, and enthusiastically agrees with the proposition that integrity in government and public administration involves, amongst other things, actively developing systems and a culture which encourages ethical behaviours, deters misconduct and makes it difficult for corruption to take root. The Integrity Commissioner and her legislative functions are an important aspect of this.

Lobbying – generally

Two factors which are central to good government are equal access to decision-makers and ensuring decisions are transparent and free from undue influence. Effective lobbying regulation is important in this regard in that it contributes to preventing corruption, increasing transparency, and improving the quality of government decision-making.

Scope of lobbying regulation and record keeping

The CCC agrees with the observation at page 47 of the report that any regulation of lobbying needs to be proportionate and imposed only to the extent needed to achieve the transparency required, to understand what activity is being undertaken and in whose interest. The CCC notes the observation, also at page 47, that extending the regulatory regime to capture activity by those representing their own interests whenever it occurs seems not to be justified unless there are clear deficiencies in achieving the required transparency that cannot be addressed in a less costly way, and that, in the case of an employee of an organisation making representations on behalf of that organisation (an in-house lobbyist), transparency is appropriately addressed in other ways.

The CCC appreciates the rationale for excluding in-house lobbyists from the legislative definition of “lobbyist”, although notes the absence of any sort of cost-benefit analysis. In relation to those providing professional and technical services, the CCC, with respect, considers that the rationale for excluding them from the definition of “lobbyist” is less compelling. The CCC, in principle, supports the inclusion of in-house lobbyists and those providing professional and technical services, but accepts that more analysis needs to be undertaken to justify the added regulatory cost.

Open Ministerial diaries contribute to transparency, although the report notes (at page 47) some lack of detail in Ministerial diaries relating to the purpose of meetings. The CCC supports recommendation 8 in principle and welcomes measures to enhance transparency of lobbying activities at all levels of government and within the public sector.

The issue with recommendation 8 is that it is narrowly focused on improving transparency with respect to Ministers and the Leader of the Opposition. Analysis of lobbying contacts shows that a large proportion of contact occurs with ministerial staff, where there is no corresponding publicly available diary. It also fails to address transparency of lobbying at the local government level.

Moreover, data shows that lobbying activity increases leading up to an election – the lead-up to an election is a “risk window” – and there is merit in considering whether lobbying of candidates, both at state and local level, should be brought within the scope of lobbying legislation.

Recommendation 8 also includes reference to the government providing 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. The CCC submits that the pre-set menu of options for the purpose of the meeting should, where possible, avoid including categories of “other” or “commercial-in-confidence” or, if such categories are used, the CCC submits that a short explanation of the subject matter should be required.

The CCC also submits that there would be merit in publishing the names of the persons who attended the meeting (i.e. the name of the lobbyist and the representative from the entity (third-party client)), as this would increase transparency and assist in promoting the proper management of conflicts of interest.

The CCC observes that an electronic disclosure system (like that used for political donations in Queensland) would also assist in enhancing transparency, as would a requirement for the publication of contact with lobbyists and all government and opposition representatives, such as is done with departmental gifts and benefits registers.

Legislative definitions

The CCC supports recommendation 9 only to the extent that it recommends amending the definition of “entity”.

The CCC notes that, at least currently, an “employee” of an entity carrying out a lobbying activity only for the purpose of representing the entity’s own interests is not a “lobbyist”, as defined (see section 41(4)(b) of the *Integrity Act 2009*). The CCC notes that there is a risk that a person who is, for all intents and purposes, a lobbyist may, to avoid the regulatory regime, represent themselves as an employee of an entity for whom they are engaging in lobbying activity (for example, by production of a letter from that entity), notwithstanding the absence of the usual hallmarks of an employee/ employer relationship. For this reason, the CCC considers that the legislation should include a definition of “employee”.

The CCC also notes the current definition of “contact” in section 42(3) of the *Integrity Act*, which includes a reference to “face-to-face meetings”. Whilst the definition of contact appears to clearly intend for the meaning of it to be broad, the CCC is concerned that the words “face-to-face” may be interpreted to limit the definition to only face-to-face meetings.

Investigation of misconduct by registered lobbyists, unregistered lobbying and corrupt conduct involving lobbying

The CCC agrees that it is important, from a compliance and enforcement point of view, for misconduct by registered lobbyists, unregistered lobbying and corrupt conduct involving lobbying to be investigated and appropriate and proportionate enforcement action pursued. The CCC notes, with general agreement, the two (2) reasons articulated in the report (at page 52) as to why it is not appropriate for the Integrity Commissioner to have powers of investigation.

Activities that fall into the categories of misconduct by registered lobbyists, unregistered lobbying and corrupt conduct involving lobbying cover a wide spectrum of conduct, from relatively minor to serious. Serious conduct involving lobbying may, for example, involve conduct engaged in for the purposes of committing more serious offences, such as official corruption or fraud. Of course, conduct which may, at first, appear minor, may turn out to be part of a more serious enterprise and/or an enabler of corruption.

The definition of “corrupt conduct” in section 15 of the *Crime and Corruption Act 2001* (CC Act) is broad, and can include conduct engaged in by people who are not public sector employees or elected officials. Moreover, the breadth of the CCC’s corruption function is revealed by section 33(2) of the CC Act :

*The commission’s **corruption functions** also include –*

(a) investigating and otherwise dealing with –

(i) conduct liable to allow, encourage or cause corrupt conduct; and

(ii) conduct connected with corrupt conduct; and

(b) investigating whether corrupt conduct or conduct mentioned in paragraph a(i) or (ii) may have happened, may be happening or may happen.

Whilst the CCC’s corruption jurisdiction is broad, the CCC is legislatively obligated, in performing its corruption function, to focus on more serious cases of corrupt conduct and cases of systemic corrupt conduct within a unit of public administration (UPA) (section 35(4) CC Act). This obligation informs CCC decision-making about which matters it retains for investigation, and the CCC’s resourcing model is

also consistent with this. Also of relevance is that the CCC has extensive (and potentially intrusive) powers that can be utilised in relation to a corruption investigation.

Anyone can make a complaint about an allegation of corrupt conduct to the CCC. Accordingly, it is unnecessary for there to be an explicit head of power for the Integrity Commissioner to refer to the CCC for investigation information concerning the activities of a registered lobbyist that may offend the provisions of section 15 of the CC Act (corrupt conduct). Moreover, if the Integrity Commissioner was a public official of a unit of public (UPA) (see response relating to recommendation 24, below), she would have a duty to notify the CCC if she reasonably suspected corrupt conduct (see section 38 CC Act). The same cannot be said, however, in relation to conduct that does not constitute corrupt conduct. Accordingly, some legislative amendment is necessary.

Subject to what has been said above, and appropriate budgetary matters being resolved, the CCC supports recommendation 14.

Information recorded in Lobbyist Register

The CCC notes the report's comment (at page 54) regarding lobbyists arguing the genuine need for the category "commercial-in-confidence". The CCC also notes the large proportion of entries in the Lobbyist Register in the six (6) month period referred to that used the "commercial-in-confidence" category.

The CCC is concerned by the significant use of the "commercial-in-confidence" category, the seeming lack of any scrutiny around its use, and the reduction in transparency associated with the use of that category (similar to the reduction in transparency associated with the use of the "other" category).

The CCC supports recommendation 15 but has concerns about it not extending to the use of the "commercial-in-confidence" category.

Other recommendations regarding lobbying

The CCC supports recommendations 10 – 13 and 16 - 18.

In relation to recommendation 11, the CCC notes it is recommended that unregistered lobbying activity be made an offence. The CCC considers there is merit in also making contravention of the *Lobbyists Code of Conduct* and/or any directives issued by the Integrity Commissioner an offence, in order to provide another regulatory option (to be used in more serious cases of non-compliance) for registered lobbyists.

In relation to recommendation 16(a), the CCC sees merit in a firm attaching its conflict of interest policy, but notes that, as the recommendation is worded, a firm could avoid that requirement if they did not have such a policy. The CCC submits that firms submitting a proposal to undertake work for the government should have a conflict of interest policy, noting the importance the proper management of conflicts of interest has in corruption prevention.

Organisational arrangements supporting the Integrity Commissioner

The CCC supports recommendation 24, and submits further that any legislative amendments should ensure that the Office of the Integrity Commissioner is a UPA and the Integrity Commissioner is a public official under the CC Act. This will ensure that the Integrity Commissioner has certain obligations (for

example, an obligation to notify the CCC of suspected corrupt conduct) and the CCC has jurisdiction over the Office of the Integrity Commissioner in the same way it has jurisdiction over other UPAs.

Yours sincerely

A handwritten signature in black ink, appearing to read "B A Barbour".

Bruce Barbour

Acting Chairperson