

Your Ref: Review of Integrity Act

Our Ref: Direct Advocacy

15 March 2012

Review of Integrity Act
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Dear Review Team

REVIEW OF THE INTEGRITY ACT 2009

Thank you for providing the opportunity for the Queensland Law Society to provide its comments to the review of the *Integrity Act 2009* (the Act).

The Queensland Law Society is the professional organisation for the solicitors of Queensland and represents more than 10,000 members in and associated to the legal profession. The Society is active in representing its members and providing expert views on legal issues to inform public debate by:

- engaging with Government in the formation of its legislation; and
- through Parliamentary policy review processes.

The Society makes submissions available on its website at www.qls.com.au.

Integrity Act Review

The Queensland Law Society has expressed its views on many issues associated with the Act on prior occasions and our submission to the Information Commissioner's recent review is **attached**.

We have commended the Government, and continue to do so, for leading nationally in this area of transparency in decision-making.

Role of the Integrity Commissioner

The Office of the Integrity Commissioner fulfils an important and integral role in promoting ethical decision-making in Government. It is important too that decisions of the Information Commissioner are subject to appropriate scrutiny and review. In the view of the Society oversight by the Parliamentary Finance and Administration Committee is an effective and non-partisan method for systemic review.

With respect to particular instances of decision-making we note that the Commissioner has the power to refuse to register any individual as a lobbyist and to cancel registrations following a show cause process. The mechanisms in place in the Act to reach these decisions accord procedural fairness to a party and are to be commended. We note however, that these final decisions under section 60 and 66 of the Act have no formal review mechanism, other than appeal to the Supreme Court under the *Judicial Review Act 1991*. It may be appropriate for aggrieved parties to have recourse to merits review at the Queensland Civil and Administrative Tribunal at the first instance. This would accord with a number of other occupational standards review mechanisms (including legal professional matters).

Regulation of lobbying

The QLS continues to hold the view that the regulation of lobbying in the Act is not and should not be about controlling how the community and community groups speak to Government.

The Act is about aiding transparency in Government decision-making by ensuring that decision-makers can readily know whose interests are being represented by those who communicate with them and to foster an environment which mitigates against fraud, bribery and corruption.

In regard to in-house lobbyists the QLS does not see that registration will add significantly to the transparency of Government decision-making. A lobbyist who is an employee of a particular entity will be acting on behalf of that entity pursuing its particular interests and this should be apparent. Whether the employee lobbyist is registered will not make this more transparent. The Society sees that there is little utility in casting the registration net wider to catch employees who lobby on behalf of their employer. Having said that the Society is mindful that employee lobbyists should always be cognisant that if they are not representing the interests of their employer but some other entity, they would be third party lobbyists and would require registration.

In regard to the definition of incidental lobbying activities the Society supports decisions about planning approvals and development approvals under the *Sustainable Planning Act 2009* being excluded. There has been some confusion about these decisions and in the Society's view it is appropriate to clarify the application in the Act.

The Society does not support any move to narrow the existing mechanisms applicable to technical or professional services providers engaging in incidental lobbying activities as a part of their professional role. In general these professions have extensive regulatory environments of their own. The legal profession as an example has extensive conduct, disciplinary, complaint and compliance requirements with respect to its members. There is no utility in appending a further layer of regulation on these professions if it merely reproduces an existing scheme. As we have previously stated, the *Legal Profession Act 2007* sets out an extensive regulatory regime for legal practitioners engaging in legal practice, which includes:

- extremely high levels of professional responsibility including fiduciary duties;
- a complaints and disciplinary regime through the Legal Services Commission and the Courts;
- professional indemnity insurance and fidelity fund obligations;
- fee agreement restrictions and disclosure obligations as well as a comprehensive, independent, cost assessment regime;
- stringent admission requirements and ongoing registration requirements to ensure practitioners are fit and proper individuals and remain so; and

- overarching duties to the Court for professional conduct and standards that precede duties to clients.

We continue to consider these as compelling arguments against introducing overlapping and repetitious compliance obligations for Australian legal practitioners through the lobbyist register.

From the point of view of transparency, it is clear for whom legal practitioners and others professionals act in any transaction – a solicitor who is undertaking incidental lobbying will identify themselves as acting for a particular client, for example.

The Society supports clarifications of the regulation of lobbying scheme which improve certainty but opposes additional compliance obligations which duplicate existing forms of regulation.

Sanctions

The Society offers no view on whether sanctions are required or are appropriate for breaches of the lobbying provisions. If they are to be introduced, there must be a strong investigatory and prosecutorial framework implemented. In doing so the investigatory work must be separated from the prosecution function to ensure that decisions about sanctions are objective and transparent. Additionally any prosecutorial decision must be subject to appeal and the exercise of punitive functions should itself be the subject of oversight by the Crime and Misconduct Commission.

These safeguards are necessary to ensure that sanction powers are used fairly, objectively and in the public interest.

National Uniformity

The Queensland Law Society considers that nationally uniform lobbying regulations would be appropriate. However, we qualify this statement by asserting that full consultation about any regulation must occur before it is adopted.

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Thank you for the opportunity to provide these comments. The Society would be very pleased to be consulted on any proposals arising from this review.

If you require any further information or clarification please do not hesitate to contact our Principal Policy Solicitor, Mr Matt Dunn on 3842 5889 or via email on m.dunn@qls.com.au. The Society does not object to public release of this submission.

Yours faithfully

Dr John de Groot
President