Response to Department of the Premier and Cabinet Issues Paper on the *Integrity Act 2009*

Lobbyists

In my view there are many problems with the lobbying provisions of the Act. The Issues Paper devotes two pages to these issues and asks:

> 3. What are your views on how the lobbyist provisions (Chapter 4 of the Integrity Act) are working in practice? Do you consider that there is a need to further clarify the operation of the Integrity Act in the context of town planners?

There are two distinct kinds of problem with the lobbyist provisions in the Act. The first is the limited reach of the Act. The second is the interpretation and application of several of its provisions.

As to the first, I repeat here the conclusions I reached in a paper I gave on 16 November 2011 to the Australian Public Sector Anti-Corruption Conference in Fremantle, "Lobbying: is registration sufficient?". In the paper I compared the schemes adopted in Australian jurisdictions (including Queensland) with the way lobbying is regulated overseas, particularly in Canada, and with standards adopted by the OECD – the Organisation for Economic Cooperation and Development. I concluded that even by the relatively limited aims of ensuring that lobbying is conducted in accordance with public expectations of transparency and integrity – the purpose of the lobbying provisions in the Queensland Integrity Act (s. 4(b)) – the Australian schemes were unsuccessful. I said, "The schemes are too narrowly focussed on a relatively few professional lobbyists, they don't provide for adequate and timely disclosure of lobbying activity, they ignore the lobbying of non-government legislators and they contain no real mechanisms for supervision or policing and very few sanctions for breaches of the various codes and laws."

The first issue that has to be addressed is whether it is sufficient to limit the regulation of lobbyists to the comparatively few lobbyists who are third party professional lobbyists. These constitute a relatively small proportion of those who lobby government. Lobbyists who work in-house for large corporations or who work for industry associations, constitute a far greater proportion of the lobbying industry than third party lobbyists. Canadian figures suggest that third party lobbyists may be only one-fifth to one-eighth of the lobbyists who engage with government.

I won't repeat here the arguments I advanced in a submission I made earlier this year, which for convenience I attach to this response to the Issues Paper. See particularly pages 5-8 and 11-13.

These are the relevant recommendations that I made (these have been slightly reworked in the summary in the Issues Paper on page 7):

> 1. That the lobbyists registration scheme be made to meet public expectations of transparency and integrity by requiring the registration of some of those third party lobbyists that are excluded at the moment and by making special provision to ensure that in-house lobbyists are also covered, though not by precisely the same regime as third party lobbyists.

2. That s. 41(3)(b) of the *Integrity Act* be amended to provide an exemption only for representatives of employers and employees and professional bodies such as the Queensland Law Society and that there be no general exemption for entities constituted to represent the interests of members.

3. That there be a requirement (added to s. 71) that a government representative must not allow themselves to be lobbied by an entity that is not required to register because it is exempt under s. 41, unless that entity undertakes to observe the relevant parts of the Lobbyists Code of Conduct in its dealings with the government.

The purpose of this last recommendation is to cover in-house and other lobbyists who are not required to register under the Act. It would mean that they nevertheless had to abide by the requirements of the Lobbyists Code of Conduct including any requirement that is inserted into the Code that lobbyists must notify the Integrity Commissioner of any lobbying meetings with government representatives.

Members of Parliament

"Lobbying activity" is defined in s. 42(1) of the Act to include "contact with a government representative in an effort to influence … the making or amendment of legislation". However s.44 defines "government representative" to exclude all Members of Parliament other than the Premier, Ministers and Parliamentary Secretaries. As a consequence of these definitions the lobbying of backbench government MPs and of all Opposition and independent MPs is not lobbying for the purposes of the Act, even though such lobbying may in fact influence the making or amendment of legislation. This may be contrasted with the situation in the United States, where the regulation of lobbying is directed primarily at the lobbying of Members of the Congress (and in the States, of members of State legislatures). Legislators in the US have more power to influence legislation than is usually the case in Australia, and the party system is very different, with far less discipline than is common in Australia.

Nevertheless, Australian Parliamentarians can and do influence the shape of legislation in many ways. This is most apparent in those jurisdictions that have upper houses where the government does not have a majority, and also in those when the government does not have a majority in the lower house (e.g. In Canberra at the moment, or in Queensland in 1997-8). Additionally MPs are occasionally freed from the party whip, for a conscience vote. Government backbenchers may also exercise influence over the shape of legislation through backbench committees, or through contact with Ministers. Also, they can and do sometimes influence "the development or amendment of a government policy or program" - s. 42(1)(b). This is understood by many entities seeking to change the law or government policies or programs. Accordingly many MPs who are not Ministers or Parliamentary Secretaries are lobbied by a range of entities seeking to influence legislative or policy outcomes. However such contact between lobbyists and MPs is not conducted in accordance with public expectations of transparency and integrity. It is not open to public scrutiny. Indeed, it is not regulated at all. Nor are those who actually lobby MPs required to account in any way for their activities. There is no public record required to be kept of any contacts between lobbyists and such MPs.

[I was questioned about the absence of any provision in the Act concerning the lobbying of MPs when I met the Parliamentary Finance and Administration Committee on 30 November 2011. Some Members mentioned that they had been lobbied about the Civil Partnerships Bill.]

In my view there is a clear public interest in regulating the lobbying of all Members of Parliament rather than, as is the case at present, limiting that regulation to contact with the Executive Government.

It should be noted that in the field of local government, the Act already covers all elected local government councillors, as well as the Mayor and council staff.

It should further be noted that s. 42 (2)(b) provides that "contact with a member of the Legislative assembly, or a councillor, in his or her capacity as a local representative on a constituency matter" is not a lobbying activity. Therefore that aspect of the work of MPs (and of councillors under the regulations that already apply) would not be covered or compromised in any way by this proposal.

I **recommend** that s.42 be amended by adding the words "or a Member of Parliament" after the words "government representative" so that the section begins "Lobbying activity is contact with a government representative or a Member of Parliament in an effort to influence…".

Town planning

Another area of concern is the interpretation and application of some of the provisions in the Act. One of these is picked up in Question 4, concerning town planners and I turn first to that.

> 4. What are your views on how the lobbyist provisions (Chapter 4 of the Integrity Act) are working in practice? Do you consider that there is a need to further clarify the operation of the Integrity Act in the context of town planners?

This is a matter of considerable concern to many local government bodies and the source of much confusion.

At present the Act, in s. 42(1)(e) specifies that a decision about planning or the giving of a development approval under the *Sustainable Planning Act 2009* is a matter about which there can be lobbying activity for the purposes of the Act. This means that where clients use town planners, or engineers or architects to try to persuade councils or their staff to give approvals and the town planners etc. do so on more than an occasional basis, those town planners etc. must register as lobbyists. If they do not, than the council staff will probably be in breach of s. 71(2), in allowing an unregistered lobbyist to lobby them.

A significant anomaly that arises under the Act is that developers who use their own staff to lobby for planning and development approvals are not lobbyists for the purposes of the Act (see s. 41(3)(e) – an entity representing its own interests) but where third parties are engaged the same activity is lobbying and is regulated by the Act.

However the planning and approval process under the Local Government Act and the Sustainable Planning Act is already highly regulated. The Local Government Association of Queensland and planners and other professionals agree that there is nothing gained from the additional regulation of this activity using the lobbying provisions of the Integrity Act. As I noted in my submission, following a meeting with representatives of the Gold Coast City Council, the Department of the Premier and Cabinet, the LGAQ and myself, the Acting Chief Executive Officer of the LGAQ wrote to me and confirmed that "the LGAQ supports the view that development application processes are presently more than adequately regulation by the *Sustainable Planning Act 2009* itself, as well as the *Local Government Act 2009* and *Local Government (Operations) Regulation 2010*."
Local government is lobbied in many areas, and I consider it important that Chapter 4 of the *Integrity Act* should continue to apply generally to local government. However it does appear that the planning and development approval area is well regulated by the provisions of the Integrated Development Assessment System (IDAS) in the *Sustainable Planning Act 2009* and by the *Local Government Act 2009*. The application of the provisions of the *Integrity Act* is therefore unnecessarily burdensome for local government, and achieves little.

This leads me to my recommendation 5 on p. 6 of the Issues Paper:

4. That section 42(1)(e) of the Integrity Act be deleted and instead its provisions be included under section 42(2) as matters that are <u>not</u> a lobbying activity.

<u>Incidental lobbying activities</u>

Another problem area concerns the exemption from the definition of lobbyist in s. 41 of an entity that carries out "incidental lobbying activities".

In my submission I said:

> This has proved to be one of the most difficult and contentious of the provisions of the Act. Two major issues are involved. The first is the extent to which professionals are meant to be excluded from the provisions of Chapter 4 of the *Integrity Act*. The second is the way the following phrase is applied – "lobbying activities are occasional only and incidental to the provision of professional or technical services".
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> The sub-section has to be read in conjunction with s. 41(6) which defines "incidental lobbying activities" (using the phrase quoted in the paragraph above) and provides four examples, which were replaced in an amendment to the Act last year in an attempt to clarify the meaning of the provision. The Explanatory Notes dealing with the amended examples stated –
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> > This amendment is included in order to clarify the operation of the exclusion for incidental lobbying which occurs when an entity undertakes a business primarily directed towards the delivery of technical or professional services. The examples are replaced to include reference to the relevant regulatory frameworks under which such technical or professional businesses operate. It is considered that activity which is already subject to regulation under specific legislation should not be subject to additional regulation under the lobbying provisions of the Act.

I consider the last sentence is the key to understanding and applying the exemption. What the exemption for professionals does not cover is activity conducted by them that is not regulated by the specific legislation covering their profession. In my view, lobbying is not an activity covered as a "legal service" by the *Legal Profession Act 2007*, nor is it an activity regulated by the various accountancy institutes nor by the *Professional Engineers Act 2002*.

In Queensland there are no legal or accountancy firms that have registered as lobbyists, though I understand at least one accountancy firm operating in Queensland has registered in some other Australian jurisdictions.

The "occasional" and "incidental" exemption is ultimately what has been relied on by professionals seeking to avoid registering as lobbyists. However last year the Office of Liquor and Gaming Regulation (OLGR) decided that many of its clients needed to register as lobbyists because it considered they were involved in lobbying as defined in the Act.

The OLGR nevertheless decided to apply a different standard for assessing whether lawyers and accountants need to register as lobbyists. Its approach was that where the relevant liquor and gaming application related activities of consultants are undertaken as only a part of the business and not their main function, and where these consultants are lawyers and accountants, then registration as a lobbyist is not required.

This year the Gold Coast City Council decided that all of the town planners and other professionals handling development approvals should register as lobbyists because they were in regular contact with council officers, and therefore did not meet the exemption requirement of being "occasional only and incidental to the provision of professional or technical services".

In my view, the approach of the Gold Coast City Council is to be preferred over that of the OLGR, relying as it does specifically on the application of the definition of the incidental lobbying activities exception in s. 41(6). The exception may be applied only where lobbying activities are "occasional only". That cannot be the case with the OLGR's regular law firm "customers". Whether or not the services they provide qualify as "incidental to the provision of professional … services" (as to that, see the discussion earlier about the changes to the examples in s.41(6)) does not matter because they cannot satisfy the requirement that they be **both** "occasional only **and** incidental…". Where law firms have multiple lobbying contacts with OLGR in the same month, it is reasonable to conclude that they do not fall within the incidental lobbying exception. Thus, for the month of June this year there were a dozen such law firms with two or more matters with OLGR, and six of them had from three to five contacts.

The exemption is interpreted differently by different departments and local councils. This cannot be avoided given the structure of the Act which puts the onus on each individual "government representative" to determine whether they are being lobbied and whether the entity lobbying them needs to be registered (see s. 71).

That being so, and given the difficulties that ss. 41(3)(d) and 41(6) create, in my view it would be better if this exemption was removed from s. 43. If it was considered necessary it could be replaced by a provision in s. 71 to allow a government representative to permit an unregistered entity to have a lobbying contact in circumstances the government representative considered, on reasonable grounds, that the contact was rare and was clearly incidental to the

provision of professional or technical services. However I do not believed that this is either necessary or desirable. In my view an amendment made to the Act last year gives professionals the justification and means of avoiding registration if they are merely doing their jobs as professionals. The amendment was to add sub-section (j) to s. 42(2) of the Act, exempting from the definition of lobbying activity "contact only for the purpose of making a statutory application". This permits, for example, a lawyer to apply for legal aid, a matter about which the Law Society has expressed concern. However once the lawyer or accountant begins to advocate a change in the law, they are in the business of lobbying and they should register as a lobbyist.

The Issues Paper summed up my recommendation in these terms:

> 3. That subsections 41(3)(d) and 41(6) be deleted from the Act. Sections 41(3)(d) and 41(6) collectively provide that an entity that carries out "incidental lobbying activities" is not captured by the lobbying provisions and therefore not required to register on the Register of Lobbyists. Under section 41(6) an entity carries out "incidental lobbying activities" if the entity undertakes, or carries on a business primarily intended to allow individuals to undertake a technical or professional occupation in which lobbying activities are occasional only and incidental to the provision of professional or technical services.

A further alternative to the suggestion above (that a government representative should have the discretion to permit an unregistered entity to have lobbying contact if the government representative considered, on reasonable grounds, that the contact was occasional and was clearly incidental to the provision of professional or technical services) is:

> That an additional sentence be added to s. 41(6) –
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> But such an entity does not carry out <u>incidental lobbying activities</u> when one of the reasons a client has engaged the entity is for the entity to seek to influence State or local government decision-making.

This would retain the "incidental lobbying activities" concept while making it a much simpler matter to determine whether it was applicable in a particular case. (This explained in my supplementary submission dated 23 June 2011, which is also attached.)

<u>Sanctions for a breach of s. 71</u>

This is an important issue but unfortunately the Issues Paper has not dealt with it adequately. The question it asks is –

> 5. Do you consider that the sanctions for lobbyists who breach lobbying provisions are adequate and appropriate?

Breaches of lobbying provisions by lobbyists are already dealt with in the Act. For example a breach of the Lobbyists Code of Conduct can result in the Integrity Commissioner cancelling a lobbyist's registration, or suspending it, or issuing a warning. I consider these sanctions to be appropriate and sufficient.

On the other hand, no sanctions are provided for a breach of s. 71 which is the core of the regulatory scheme. Section 71(1) prohibits lobbying by an unregistered entity. Section 71(2) forbids government representatives from knowingly permitting an unregistered lobbyist from lobbying the government representative. As I pointed out in my original submission:

> Crown Law has issued several legal updates concerning the public sector obligations for dealing with lobbyists. Under the heading, "Consequences of non-compliance", the latest Crown Law advice is in these terms:
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> > The *Integrity Act* does not make it an offence for a person to fail to comply with the obligations in s. 71(2) and (3).
> > However, government representatives and responsible persons could still be prosecuted for a criminal offence under s. 204 of the Criminal Code (disobedience to statute law). This section makes it an offence for a person without lawful excuse to do any act the person is forbidden to do, or not to do any act the person is required to do, by the provisions of any public statute in force in Queensland.
> >
> > In addition, a breach of s. 71(2) or s. 71(3) may have disciplinary consequences for public servants.
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> The LGAQ, in its submission to me, noted that the offence prescribed by s. 204 of the *Criminal Code* carries a maximum penalty of imprisonment for one year. It said, "If this truly is the potential criminal exposure for failing to comply … then, in the LGAQ's submission, the punishment certainly does not 'fit the crime'."
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> The LGAQ proposed that failure to comply with the subsections should be dealt with –
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> > For a councillor - as misconduct (as that term is defined in section 176 of the *Local Government Act 2009* and section 178 of the *City of Brisbane Act 2010*); or
> >
> > For a Council employee – as conduct for which disciplinary action can be taken pursuant to Chapter 5, Part 3 of *the Local Government (Operations) Regulation 2010* and Chapter 5, Part 3 of the *City of Brisbane (Operations) Regulation 2010*.
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> If that approach were to be adopted, it could similarly be provided that it would be a disciplinary offence under the Public Service Act for a public servant to fail to comply with the sections. However that general approach would not deal with a breach by a Minister or Parliamentary Secretary. If sanctions were to be included in the Integrity Act it might be desirable to impose a monetary fine with disciplinary action as an alternative.

The Queensland Police Service supported the introduction of a sanctions regime. In its submission to me it said:

> The intent of the legislation appears to indicate that it is more than likely these sanctions [concerning cancellation etc. of registration] would only be activated for serious breaches. A similar observation was made in the [ICAC report] with suggestions that a scale of sanctions may be more appropriate to deal with less serious

breaches. The QPS is supportive of the sanction regime being more expansive and inclusive.

Further, it may also be advantageous to have in existence as part of the administrative law process, a precedent/comparative sanctions register to ensure consistency and equity in decision making.

I pointed out that so far as unregistered lobbyists are concerned, the prohibition against unregistered lobbying in s. 71(1) has no teeth. Some (unregistered) lobbyists can, and do, ignore its provision so long as they are not refused access by government representatives. I have had several such cases brought to my notice, and all I can do is to write to the lobbyist concerned urging them to register, or raise the matter with the local government, urging them not to have dealings with any unregistered lobbyist.

The Western Australian Government in its Integrity (Lobbyist) Bill provides for a penalty of $10,000 in the equivalent provision to s. 71(1).

I **recommend**

5. That a sanctions regime be introduced for breaches of section 71(1), (2) and (3) of the Integrity Act.

I **recommend** the adoption of the same penalty for a breach of s. 71(1), $10,000, as has been proposed by Western Australia, and the adoption of a scheme such as that recommended by the LGAQ for breaches by government representatives of s. 71(2) and (3) with an equivalent provision for government representatives employed under the Public Service Act. In addition a monetary penalty be provided as an alternative.

Post separation and employment restrictions

The Issues Paper asked:

6. Are the post-separation employment requirements for senior government representatives appropriate?

7. Is there any further material required to guide contact between government, the lobbying industry and former senior government representatives?

Post-separation employment for senior government representatives is regulated (or not) in three different ways:

1. There is a legislative ban, in the Integrity Act, on lobbying by former senior government representatives for 2 years in an area where the person had official dealings in the 2 years before becoming a former senior government representative. Note that this does not apply where the former senior government representative is involved in-house, as an employee, director etc. of an entity that wants to lobby government.

2. Restrictions reflected by a Public Service Commission policy document that summarises contractual and code of conduct requirements preventing former

senior government representatives for 18 months from having meetings with officials on matters where they had official dealings in the previous 18 months.

3. A ban on the use of confidential information. This is supported by legal restraints.

I have suggested that the Integrity Act, as well as prohibiting the relevant lobbying activity should also deal with the issues of meetings and confidentiality. The Issues Paper takes a dim view of my suggestion saying (p. 10) –

> The current administrative regime provides flexibility in responding to emerging issues and ensuring that requirements keep pace with public expectations, which would be difficult to achieve via legislation. The objective of regulation in this area is to provide an accountable and transparent framework rather than a prohibitive regime that could be seen as overly restrictive.
>
> Enshrining post-separation employment obligations and sanctions in legislation could be overly onerous and difficult to both monitor and enforce. An alternative could be to adopt a similar approach to the Commonwealth and require registered lobbyists to disclose previous employment as a government representative, including the date that the person became a former government representative.

The second sentence in the second paragraph fails to appreciate that the suggested alternative – the Commonwealth approach – is far less restrictive than the system already in place in Queensland. Lobbyists are already required to disclose if they are former government representatives on the Lobbyists Register and directly to government representatives if they try to lobby them.

However these restrictions, arising out of provision in the Integrity Act, apply only to lobbying. There is no legislative support for the bans on meetings between former senior government representatives and public servants or Ministers or Ministerial staff. The Public Service Commission's policy document has no force in relation to former senior government representatives. The extent to which contractual and codes of conduct obligations are effective is not known but are certainly less enforceable than if the restrictions were put into legislation. It might be appropriate to obtain Crown Law advice about this.

Such advice could be relevant to the suggestion in the first paragraph quoted that the administrative scheme provides an "accountable" framework. The only people who might be held to account under the existing scheme are public servants who have meetings with former senior government representatives contrary to the requirements of the PSC's policy document. In my view this is insufficient.

As I wrote in an earlier submission:

> In my view the present integrity system in relation to post-separation employment relies for enforcement too heavily on current public servants. It would send a stronger message to departing senior government representatives if they were aware that there were legislative restrictions on them. This would also ensure that there could be no successful challenge to former contractual provisions that might be considered by the

courts contrary to public policy as restraint of trade because of the length of time that bans apply.

Because “former senior government representative” is defined so broadly (in the *Integrity Act*) to include former Ministers, Parliamentary Secretaries and their staffs, and local government councillors and officials, it would probably be necessary to put such legislative controls on post-separation employment in the *Integrity Act*. It should also include sanctions, if it is to be taken seriously by the people at whom it is directed, as well as by the public.

I therefore **recommended**:

2. The Integrity Act should be amended to include a part detailing the post-separation obligations of former senior government representatives. The part should include sanctions for breaches of the Act.

Alternatively I proposed:

1. The Integrity Act should be amended to allow some former designated persons (former Members of Parliament and Ministers, former statutory office holders, former chief executives and former staff of Ministers and Parliamentary Secretaries) to seek advice from the Integrity Commissioner about post-separation issues for a period of two years after they cease to be designated persons.

This would be unnecessary if recommendation 2 was adopted. In that case the Integrity Commissioner would not be able to provide what would amount to legal advice about a section of the Act.

National uniformity?

The Issues Paper asks:

8. Do you consider that nationally uniform lobbying regulation would be appropriate?

Everyone thinks this would be a good idea but achieving it would be difficult. The fact is that governments have adopted the regulation of the lobbying industry for very different historical and political reasons. It would be beneficial for everyone if we had either a national system, or mutual recognition, but I have serious doubts that it will ever happen and whether it is worth putting any effort into trying to achieve it. At a meeting of fellow administrators from around the country earlier this year no-one thought that any real progress was achievable.

The Issues Paper lists some of the benefits of nationally consistent regulation of lobbying. I do not repeat them here.

Some of the difficulties that stand in the way of uniformity are:

1. So far only Queensland, and (shortly) Western Australia, regulate lobbyists using legislation.

2. Bans on some former senior government representatives from lobbying vary from 12 months to 2 years. In Queensland and most jurisdictions the ban applies to lobbying in relation to areas where the former government representative had had official dealings. In Western Australia there is a complete ban on various former senior government representatives being registered as a lobbyist.

3. Western Australia specifies a $10,000 penalty for unregistered lobbying. No other jurisdiction does.

4. Queensland alone allows the Integrity Commissioner to warn, suspend or remove lobbyists in relation to their (mis)conduct. Different administrative regimes would make mutual recognition very difficult.

It would be possible to devise a uniform scheme but this is unlikely to be achieved except by agreement at Ministerial, or more likely, heads of government level (through COAG).

It should be noted that Western Australia has adopted a new terminology to replace "Lobbyists Register" which is used in all other jurisdictions. I have pointed out that there is considerable resistance to the use of the word "lobbyist" and suggested, but not endorsed, the idea that it could be replaced by "lobbyist and consultant". The Western Australian legislation proposes its register will be called a Register of "Advocates to Government". This might be considered less objectionable by many of those who disapprove of the term, "lobbyist".

Implementation and Recordkeeping

The Issues Paper asks:

9. How can the Queensland government, local government and the Integrity Commissioner continue to work together to implement the integrity framework under the Integrity Act?

It explains the requirements for good record-keeping by public agencies and notes my own recommendation:

8. That section 72A should include a note pointing out that the *Public Records Act 2002* requires that records must be made and kept of all contacts where entities seek to influence government decision making, whether the entity is registered or not.

While the obligation for record-keeping does exist I think it would be useful to have that fact noted in the Act.

I have also **recommended** that to ensure that the Integrity Commissioner can conduct research about the way the lobbying regulatory system is operating:

6. That section 72A be amended to make it clear that a "responsible person for a government representative" has an obligation to disclose to the Integrity Commissioner, if requested, information about contacts that amount to lobbying, whether by registered lobbyists or otherwise.

Obligations of lobbyists

Most jurisdictions outside Australia that regulate lobbying require registered lobbyists to report contacts they have with government representatives. In Canada, for example, at the national level, lobbyists are required to update their registration every six months. Among the details they are required to record are who was paid to lobby for which firms, corporations, organisations or associations, which Canadian Government departments or agencies were being contacted, and what the lobby activities were about, including a general description of

subject matter and details such as the names and descriptions of specific legislative proposals, bills, regulations, policies, programs of interest and grants, contributions or contracts sought.

Since 2008 Canadian lobbyists have also been required to update the registrations each month if any information has to be corrected, additional information added or if the undertaking is terminated. But the most stringent requirement concerns communications with Designated Public Office Holders (DPOH) - Ministers or their staff and very senior public service executives, plus Members of Parliament and Senators. Lobbyists are required to report on a monthly basis any oral and arranged communication with a DPOH, including the name of the consultant lobbyist or most senior officer in the corporation or organisation, the name of the DPOH, the subject matter of the communication and when it occurred.

In Queensland the Integrity Act in s.68 gave the Integrity Commissioner power to approve a Lobbyists Code of Conduct after consultation with the parliamentary committee. This was completed in March 2010. Before doing so I issued a discussion paper about its possible contents and invited public comment, including from lobbyists. One issue was whether registered lobbyists should be required to report to the Integrity Commissioner on their lobbying contacts with government representatives. This was strongly resisted by the lobbyists (on grounds such as red tape, increased workload and confidentiality) and the code as approved did not include any such requirement.

When the Act came into force, the Crime and Misconduct Commission notified all Departments that they were required to keep records of contacts with lobbyists, and provided them with a spread sheet (with drop down menus) to facilitate their record keeping. Later it advised local governments that they should also keep records of contacts with lobbyists. The Act was later amended to permit the Integrity Commissioner to seek access to these records, notwithstanding any restrictions that might flow from the Information Privacy Act.

My sampling of these records has not persuaded me that they give me an accurate and adequate picture of the lobbying of the public sector by third party professional lobbyists. I consider that I do need some reporting from lobbyists to supplement the information available from the public sector. I therefore intend to make an amendment to the Lobbyists Code of Conduct to require lobbyists to provide the Information Commissioner with a limited amount of information about their contact with government representatives and, if the Act is amended as I have recommended earlier, with Members of Parliament. I should note that Members of Parliament (other than Ministers and Parliamentary Secretaries) are <u>not</u> required by the Public Records Act to keep official public records, so lobbyists are the only possible source of information about contacts between lobbyists and MPs. Without records there cannot be any public satisfaction that contact with lobbyists is in accord with the transparency and integrity the public is entitled to expect.

Not all information that the Integrity Commissioner collected would be made available publicly. The restraints of the Right to Information Act and the Information Privacy Act would apply and limit the material that could be made public. However I would publish at least some de-personalised statistical data on the Integrity Commissioner's website.

Before amending the Lobbyists Code of Conduct I will consult with the Parliamentary Committee, as I am obliged to so under s.68 of the Act. I have not, as yet, determined the precise nature of the changes that I will propose. Before doing so I will consult with stakeholders and the public generally.

Questions raised in the Issues Paper and responses

1. Do you consider that the role and functions of the Integrity Commissioner are appropriate or are there ways in which they could be improved?

2. Are there any specific issues that the government needs to consider regarding the operation of the Integrity Act?

Response: I **recommend**:

(a) The secrecy provisions of the Integrity Act should be retained.

(b) The Integrity Commissioner should not have an investigative role in relation to the advisory function under the Integrity Act.

(c) The Integrity Act should be amended to allow the Integrity Commissioner the option of providing advice to a "relevant officer" where the officer's chief executive has not provided the authority required by section 15(3).

(d) The Integrity Act should be amended to give the Integrity Commissioner authority to review all declarations of interest with which he must be provided under a statute. If the Integrity Commissioner identifies a conflict of interest or possible conflict, the Commissioner should be entitled to raise the issue directly with the officer concerned. If the issue is not resolved satisfactorily, the Integrity Commissioner should be permitted to raise the matter with the relevant Minister.

(e) The definition of "designated person" (s. 12) be broadened to include endorsed candidates and declared independents standing for election to the Queensland Parliament.

(f) Section 77 (Leave of absence) be amended to reflect the equivalent provisions in the Ombudsman Act and the Right to Information Act.

3. Do you think that Members of Parliament should be required to meet with the Integrity Commissioner (at least once a year) to discuss ethics and integrity issues?

Response: I **recommend**:

(g) That no change be made to the present provisions in section 22 and 23.

4. What are you views on how the lobbyist provisions (Chapter 4 of the Integrity Act) are working in practice? Do you consider that there is a need to further clarify the operation of the Integrity Act in the context of town planners?

(h) That the lobbyists registration scheme be made to meet public expectations of transparency and integrity by requiring the registration of some of those third party lobbyists that are excluded at the moment and by making special provision to ensure that in-house lobbyists are also covered, though not by precisely the same regime as third party lobbyists. (See (j) below.)

(i) That s. 41(3)(b) of the *Integrity Act* be amended to provide an exemption only for representatives of employers and employees and professional bodies such as the Queensland Law Society and that there be no general exemption for entities constituted to represent the interests of members.

(j) That there be a requirement (added to s. 71) that a government representative must not allow themselves to be lobbied by an unregistered entity unless that entity undertakes to observe the relevant parts of the Lobbyists Code of Conduct in its dealings with the government.

(k) That s. 42(1)(e) of the *Integrity Act* be deleted and instead its provisions be included under s. 42(2) as matters that are <u>not</u> a lobbying activity.

(l) That an additional sentence be added to s. 41(6) b –

But such an entity does not carry out <u>incidental lobbying activities</u> where one of the reasons a client has engaged the entity is for the entity to seek to influence State or local government decision-making.

5. Do you consider that the sanctions for lobbyists who breach lobbying provisions are adequate and appropriate?

(m) That a sanctions regime be introduced for breaches of s. 71(1), (2) and (3) of the Integrity Act.

(i) That the penalty for undertaking lobbying while unregistered be a fine of $10,000 (as in Western Australia).

(ii) That the penalty for breaches of s. 71(2) and (3) be – for government representatives in local government – as proposed by the LGAQ

For a councillor – as misconduct (as that term is defined in section 176 of the *Local Government Act 2009* and section 178 of the *City of Brisbane Act 2010*); or

For a Council employee – as conduct for which disciplinary action can be taken pursuant to chapter 5, part 3 of the *Local Government (Operations) Regulation 2010* and chapter 5, part 3 of the *City of Brisbane (Operations) Regulation 2010*.

(iii) That equivalent disciplinary penalties for government representatives subject to the Public Service Act be specified.

(iv) In addition, a monetary penalty be provided as an alternative.

6. Are the post-separation employment requirements for senior government representatives appropriate?

7. Is there any further material required to guide contact between government the lobbying industry and former senior government representatives?

(n) That Crown Law advice be sought about the use of legislative prohibitions in the Integrity Act to enforce the regulation of post-separation employment.

(o) The Integrity Act should be amended to include a part detailing the post-separation obligations of former senior government representatives. The part should include sanctions for breaches of the Act.

(p) As an alternative to (o), the Integrity Act should be amended to allow some former designated persons (former Members of Parliament and Ministers, former statutory office holders, former chief executives and former staff of Ministers and Parliamentary Secretaries) to seek advice from the Integrity Commissioner about post-separation issues for a period of two years after they cease to be designated persons.

8. Do you consider that nationally uniform lobbying regulations would be appropriate?

(q) They would be appropriate but are unlikely to be achieved unless agreed to by heads of government.

9. How can the Queensland Government, local government and the Integrity Commissioner continue to work together to implement the integrity framework under the Integrity Act?

(r) That section 72A should include a note pointing out that the *Public Records Act 2002* requires that records must be made and kept of all contact where entities seek to influence government decision making, whether the entity is registered as a lobbyist or not.

(s) That section 72A be amended to make it clear that a "responsible person for a government representative" has an obligation to disclose to the Integrity Commissioner, if requested, information about contacts that amount to lobbying, whether by registered lobbyists or otherwise.