Review of Chapter 4 of the Integrity Act, 2009 – Regulation of lobbying activities

A supplementary submission concerning "incidental lobbying activities"

Dr David Solomon AM, Queensland Integrity Commissioner

In my earlier submission I recommended that ss. 41(3)(d) and 41(6) should be deleted from the *Integrity Act*. While I consider that would be the best outcome, I should put forward an alternative in case this is considered too drastic a change. This alternative proposal would ensure that the "incidental lobbying activities" exception was given its intended meaning, and would clarify the obligation of, for example, legal and accountancy firms that run government relations businesses, to register. The proposal is based partly on the reasoning in the Explanatory Notes relating to the amendment made in 2010 to change the examples in s. 41(6) and partly on exploring what is meant by "incidental".

I quoted the relevant part of the notes in my earlier submission –

> 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.[1]

As I said in that submission, I consider the last sentence is the key to understanding and applying the exemption. What the exemption for professionals does <u>not</u> cover, unless it is truly incidental, is activity conducted by them that is not regulated by the specific legislation covering their profession. I have no doubt that lobbying is <u>not</u> 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*.

It seems to me that the defined and accepted meaning of the word "incidental" has not been applied. The phrase "incidental to the provision of professional or technical services" has been taken to refer to the all of the activities of legal, accountancy etc. firms. In my view the critical question is why a particular client has engaged the professional or technical entity. Narrowing it down in this way is justified by the last sentence in the Explanatory Notes quoted above.

The Macquarie dictionary (concise, 5th edition) defines incidental as "1. Happening or likely to happen in fortuitous or subordinate conjunction with something else. 2. Incurred casually and in addition to the regular or main amount…"

[1] p.30

If the "incidental lobbying activities" exception is to be maintained, it should be made clear in the Act, that lobbying is not "incidental" when one of the reasons the client has engaged the entity is to seek to influence State or local government decision making (other than for one of the purposes listed in s. 42(2)). The Macquarie definition justifies the use of the phrase "one of the reasons", rather than "the primary reason", or "mainly". It is sufficient to negate the claim that providing the lobbying service is incidental, if "one of the reasons" the client has engaged the entity is to seek to influence State or local government decision making.

"Incidental" would be given its dictionary meaning if this additional sentence was added to s. 41(6) –

> But such an entity does not carry out ***incidental lobbying activities*** 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.

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