LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE
Speaker (Chair), Ms Tara Cheyne MLA, Mr Shane Rattenbury MLA,
Mr Andrew Wall MLA

Submission Cover Sheet

Inquiry into the ACT Register of Lobbyists

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Secretary
Standing Committee on Administration and Procedure
ACT Legislative Assembly
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Dear Sir / Madam

Thank you for providing Cornerstone Group Australia (Cornerstone) with the opportunity to make a submission to the Australian Capital Territory (the ACT) Legislative Assembly's Standing Committee on Administration and Procedure (the Committee)'s inquiry into expanding the scope of the ACT register of lobbyists to include 'in-house government relations staff, industry associations, project management liaison officers and companies' (the Inquiry).

Cornerstone is a leading bipartisan government and public affairs advisory firm. Cornerstone represents an array of clients with the Commonwealth and state and territory governments and parliaments nationwide. We and our clients are registered on the lobbyist registers of all relevant jurisdictions in which we operate. Therefore, we are well positioned to provide insights and a perspective that would assist the Committee with this Inquiry.

Our perspective

Government advocacy, or 'lobbying' as it is commonly known, is a valuable component of the policy, legislative, and regulatory process in all democratic systems of government. Lobbyists facilitate communications between companies and organisations on the one hand and political actors and other decision-makers in government on the other. Professional lobbyists ensure a smooth and efficient process of government decision-making, and development of policy and legislation.

As many lobbyists are former politicians, political advisers, or bureaucrats, they know how government works and can assist their clients and employers in understanding the systems and processes of government, and by developing strategies that help them to better communicate their wishes to government stakeholders. In this sense there is no material difference between the work undertaken by a 'consultant' or a 'third-party lobbyist' and that of an 'in-house lobbyist' or 'government relations staff'.

Yet, all Australian jurisdictions, including the ACT, make a distinction between third party lobbyists and in-house lobbyists, applying codes of behaviour and a requirement to register on one group (third party lobbyists) and not on in-house lobbyists. The ACT Register of Lobbyists defines a lobbyist as follows:

> *A lobbyist is any person, company or organisation who conducts lobbying activities on behalf of a third party, or whose employees or other personnel conduct lobbying activities on behalf of a third party, where such lobbying activities are ordinarily carried out in the expectation of receiving direct or indirect financial reward or other valuable consideration whether or not the amount thereof is ascertainable at the time such activities are conducted.*[1]

Further, the ACT Register of Lobbyists exempts the following persons from having to register:

- *religious bodies;*
- *charities;*
- *not-for-profit organisations that represent the interests of their members, such as trade unions, trade and industry associations, et cetera;*
- *members of foreign trade delegations;*
- *individuals/bodies registered under government laws where dealings with government are part of the normal day-to-day work of people in their profession, for example, architects, customs brokers, et cetera;*
- *members of professions who make occasional representations to government on behalf of others in a way that is incidental to the provision of their professional services, for example, doctors, accountants, lawyers; and*
- *individuals who conduct lobbying activities only for relatives or friends provided that such are only in respect of the personal rather than business or commercial affairs of such persons.*[2]

However, regulations that attempt to distinguish between third-party lobbyists and in-house lobbyists are based on a superficial understanding of lobbying and are inherently flawed. In-house lobbyists working for companies, religious bodies, charitable, and other organisations are not required to register because of the view that there are no transparency issues regarding their purpose in lobbying politicians and government officials. The argument goes that it is self-evident which organisations they are lobbying on behalf of and for what purpose.

On the other hand, third-party lobbyists are required to register because it is not necessarily apparent which persons or entities they may be representing. Third-party lobbyists are also required to place on the register the clients they represent to ensure an appropriate level of transparency and scrutiny of their activities.

This superficial distinction supposes third-party lobbyists do not necessarily disclose – or perhaps even actively seek to hide – the identities of the individuals and organisations on whose behalf they are operating. How this might occur in practice is difficult to understand. If a third-party lobbyist was to approach a politician or government official seeking to influence an outcome on a particular piece of legislation impacting, say, the fintech sector, it is clear the lobbyist is not acting on his or her own

[1] ACT Legislative Assembly: General Information on the ACT Register of Lobbyists.
[2] ibid.

behalf and must be engaged by a player in that sector. Further, it is incumbent upon the public official to inquire on whose behalf the lobbyist is acting. It is hard to imagine a public official would not, at least out of intellectual curiosity if not as a matter of professional integrity and due diligence, make such an inquiry of the lobbyist.

It is our contention that the true purpose of transparency and scrutiny of lobbying must be to provide members of the general public visibility into the world of lobbying and government processes. As lobbyist registers in Australia only require registration of third-party lobbyists, Australians are denied full visibility into who maybe attempting to influence policy and legislative outcomes. Requiring all lobbyists, including in-house lobbyists, to register would provide greater transparency and scrutiny of who is lobbying whom and for what purposes.

Further, there is a category of third-party lobbyist that is currently able to skirt the requirement for registration. These include legal firms, management consultancies, and accounting firms which do not list on lobbyist registers on the basis that they are providing services other than lobbying to their clients. However, they do in fact engage in what is lobbying on behalf of those clients by providing a range of services, including attending meetings with public officials on behalf of their clients or together with their clients. Their activities therefore mirror the work of third-party lobbyists. In some instances, these firms have whole divisions dedicated to providing lobbying advice and other services for their clients. This means that many legal, management, and accounting consultancy firms are able to operate largely outside of government oversight and public scrutiny. This also should be addressed.

Treatment of in-house lobbyists overseas

In considering registration of in-house lobbyists in the ACT, it is important to note that several international jurisdictions require in-house lobbyists to be included on registers of lobbyists.

United States of America

For example, the United States *Lobbying Disclosure Act (2008)* requires in-house lobbyists to register. They must list their own organisations as their clients. The Act was amended so that, as of 1 January 2017, an organisation employing an in-house lobbyist whose "total expenses for lobbying activities does not exceed $13,000 and is not expected to exceed $13,000 during a quarterly period" is exempt from registration.[3] That means that any in-house employee of a company whose total expenses for lobbying exceeds US$13,000 in a quarterly period must be listed on the register of lobbyists.

Canada

Since 2005 the Canadian Government has required the registration of in-house lobbyists. The definition is applied to both in-house lobbyists of corporations and of the not-for-profit sector. An in-house lobbyist is defined as an employee of an organisation who spends 20 per cent or more of his or her time in one month communicating with public office holders on behalf of their employer.[4]

[3] Office of the Clerk, US House of Representatives: Lobbying Disclosure Act Guidance, revised 31 January 2017.
[4] Office of the Commissioner of Lobbying of Canada: The Lobbying Act.

A number of Canada's provinces also require in-house lobbyists to register, such as Newfoundland Labrador.[5] Similarly, the City of Ottawa requires registration of in-house lobbyists and specifically includes voluntary (unpaid) lobbyists of both for profit and not-for-profit organisations, and in-house lobbyists employed by trade unions and labour associations.[6]

Recommendations

Recommendation 1: Include in-house lobbyists on the register

Cornerstone Group Australia strongly recommends that the ACT Legislative Assembly follow the model set by Canada's federal government and require both third party and in-house lobbyists to be included on its register of lobbyists. As Australian academic George Rennie of the University of Melbourne, an expert on lobbying strategies, put it:

> *Canada's recognition of the different types of lobbyists evolved over time. Initially, Canada only made laws dealing with consultant lobbyists, but it realised how inadequate this proved to be, and updated its laws [to include in-house lobbyists]. Canada's lobbying regulation is far from perfect, but it at least has teeth. Australia can avoid much of Canada's long history of legislative redrafting by using its experience to get it right the first time.*[7]

The ACT Legislative Assembly is therefore uniquely placed to set the standard for other Australian jurisdictions, including the Commonwealth.

Recommendation 2: Definition of "in-house lobbyist"

We further recommend that Canada's definition of an "in-house lobbyist" as any employee or volunteer of an organisation who spends 20 per cent or more of their time within a financial quarter engaged in activities to influence holders of public office positions be adopted for the purposes of the ACT's Register. This is a simple measurement to determine which in-house employees of organisations are engaged in lobbying and should be registered.

Recommendation 3: Expand definition of "third party lobbyists"

Although not a subject of the current inquiry, we also recommend that the definition of "third-party lobbyist" should be expanded to also include the employees of law firms, management consultancies, accounting companies, and any other business categories, who are involved in activities normally associated with lobbying. In the case of these services firms, any employee who is involved in work normally defined as lobbying on behalf of a third party client of their organisation, should be required to list on the Register of Lobbyists. Their company organisations should similarly be listed as lobbying companies and their clients as clients of the respective organisations.

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[5] Newfoundland Labrador, Canada: Registry of Lobbyists; Frequently Asked Questions.
[6] Ottawa City Hall: Accountability and Transparency; Register of Lobbyists.
[7] George Rennie, Australia's lobbying laws are inadequate but other countries are getting it right, *The Conversation*, 21 June 2017.

Recommendation 4: Adopt a broad definition of "in-house lobbyist"

The definition of "in-house lobbyist" should include employees and volunteers of any organisation, whether commercial or not-for-profit or charitable, who spends 20 per cent or more of their time in any activities intended to influence certain policy, legislative or procurement outcomes.

Conclusion

The ACT Legislative Assembly is to be commended for undertaking this review of its Lobbyist Register. The Assembly has an opportunity to set the standard for registration of lobbyists in Australia. By expanding the definition of lobbyist to also include in-house lobbyists of both for-profit and not-for-profit organisations it can close the loopholes that currently enable many involved in lobbying to escape government oversight and public scrutiny, and thereby improve transparency in the political system.

By broadening who is required to list on the Register of Lobbyists, the ACT Legislative Assembly will maintain and possibly enhance the integrity of its political system and build greater trust between the system's legislators and its citizenry.

We would be pleased to provide further information to the Standing Committee on Administration and Procedure or to appear before it in relation to this review and the information provided in this submission.

Thank you again for this opportunity to participate in the Committee's Inquiry. We look forward to seeing the Committee's report and recommendations.

Yours sincerely

Alistair Nicholas
Chief Executive Officer