

## **An island within an island: exploring the intersection of legal and public relations advice**

Advice from lawyers and communication professionals is often perceived as contradictory, striving to influence senior management's response one way or another, especially in crisis situations. Indeed, the relationships between legal advisors and communication departments is typically depicted as one *marked* by conflict and power tussles, driven by the desire to reinforce legitimacy. Whilst lawyers seek to protect against possible liability and future litigation, communication professionals emphasise the need for transparent and open communication, driven by the desire to establish trust and safeguard an organisations' long-term reputation.

The author argues that legal and communications advice should not only not be seen in opposition, but furthermore that legal knowledge needs to be more consciously embedded in public relations practice and education. Indeed, much of the perceived 'conflict' between legal and communication expertise may be the result of both professions working largely in isolation. A multi-national qualitative exploratory project of lawyers found that lawyers were concerned about the lack of legal awareness among communication professionals (Jaques & SenateSHJ, 2020). The same could be argued the other way round.

This paper examines the interrelated nature of legal and communication advice based on the State of Western Australia's closed border policy. On 15<sup>th</sup> March 2020, four days after the World Health Organization declared COVID-19 a pandemic, the Minister for Emergency Services declared a State of Emergency pursuant to section 56 of the *Emergency Management Act 2005 (WA)*(Government of Western Australia). *This decision was followed by the declaration of a Public Health Emergency and a Closing the Border Direction*(Government of Western Australia, 2020a), which effectively isolated the State of Western Australia from not only the rest of the world, but also the rest of the country, for the following eight months.

The decision to effectively turn the State into an "island within an island" (Laschon, 2020) was justified by following advice from the State's Chief Health Officer(Government of WEstern Australia, 2020b). The health framing is crucial from a legal perspective, as two sections of the Australian Constitution explicitly enshrine a guarantee of internal mobility across the Australian continent (Parliament of Australia).

The border closure was challenged by business man and politician Clive Palmer in a public legal tassel (Hastie, 2020), which was at least initially supported by the Federal Government. However, the reasoning on health grounds, i.e. the taking of "defensive precaution" against dangers to a State's "domestic order, its health, or its morals"<sup>1</sup> have long been accepted as legally justifiable

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<sup>1</sup> See e.g. *R v Smithers* [1912] HCA 96

action. Hence, Western Australia's Premier Mark McGowan was confident that any legal challenges would be decided in favour of his border policy, which had driven a surge in popularity for his government. Indeed, five months into the border closure, the State Premier was enjoying an 89 per cent approval rating (Kagi, 2020b), which left the party confident in the lead up to the 2021 State elections (McNeill & Hondros, 2020).

However, on 1<sup>st</sup> October, the State Premier, who studied law himself, jeopardised the future of his popular policy when prioritising popularity over legal advice (Kagi, 2020a). In what may have been a slip of the tongue, fuelled by record popularity and the prospect of another four years in government, the Premier appeared to be admitting self-interest as a key driver for the border closures (Bourke & Birch, 2020).

Using the WA Border closure as a case study, this paper examines the intersection between legal and communication advice, arguing that both cannot be considered in isolation.

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