# SUBMISSION: REFORMING OVERSIGHT OF LOBBYING IN TASMANIA

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## Executive Summary & Recommendations

Since the establishment of the Tasmanian Lobbyist Register and Lobbying Code of Conduct in 2009, this consultation process is the first comprehensive review of the state's lobbying regulatory system undertaken. This review provides a once-in-decades opportunity to invest in strengthening transparency, accessibility, oversight and compliance of this integrity mechanism and by doing so also invest in restoring public trust and confidence in Tasmania's democratic system of governance.

Key purposes of regulating lobbying activities can be can be summarised as:

- The prevention of corrupt behaviour by lobbyists and public officials;
- Providing political equality by ensuring the fairness of public policy formation and decision-making processes by reducing the incidence of secret lobbying by vested interests, reducing the risk of regulatory capture by government while also increasing transparency in the disclosure of lobbying activities;
- Ultimately, improving the quality of government decision-making and policymaking by ensuring government decisions are made based on merit, rather than skewed towards narrow sectional interests. This in turn will increase public confidence in the integrity of political institutions;
- Providing mechanisms for effective implementation, compliance and review.

1. Tasmania's current lobbying regulation system is amongst the weakest when compared with other Australian jurisdictions, and lags behind other interstate models on key criteria including range of those to whom regulation applies, degree of information required to be disclosed, and compliance and enforcement.
2. All Members of Parliament should be covered by the state's lobbying regulation system.
3. Consideration should be given to including local government councillors under the state's lobbying regulation system as well.
4. Both the definition of 'lobbyist' and the lobbying regulatory system need to be expanded to include in-house and other lobbyists additional to third-party lobbyists.
5. Lobbyists should be required to provide, as a minimum, the following information on an online register:
   - Which public officers were lobbied
   - When public officers were lobbied
   - Method of contact, and frequency of contact with identified public officers
   - The purpose and substance of the contact, including subject matter and whether, and if so which policy/regulations/programs/ legislation was the focus of discussion
   - Desired and intended outcomes from the contact
6. All public officers involved in lobbying activities (including government, non-government MPs, political staffers', and public sector staff diaries) should be disclosed publicly as a matter of routine as a core component of the state's lobbying regulatory system.
7. Lobbyist activity reports should be disclosed every quarter, to address ongoing public frustration over the lack of timely release of pertinent information, particularly within a parliamentary and/or election context.
8. Specific legislation should be introduced to empower the Integrity Commission to provide lobbying oversight and compliance measures. This legislation should be reviewed every five years.
9. 'Cooling off' periods between post-employment and lobbying activity need to be expanded to include MPs, political staff and public sector staff, and should not be for any period of time less than 12 months.
10. The payment of lobbying 'success fees' should be banned. Currently Tasmania is the only Australian state which does not explicitly do so.

## Introduction

Political lobbying is widely recognised as a legitimate form of participation in the democratic system. As stated by the Organisation for Economic Co-operation and Development (OECD) lobbying, *"… can provide decision-makers with valuable insight and data and facilitate stakeholders' access to the development and implementation of public policies. However, it can also lead to undue influence, unfair competition, and regulatory capture to the detriment of the public interest and effective public policies"* (OECD 2014; pg 15).

This current review of Tasmania's lobbying oversight system is very welcome and timely, as there has been ongoing disquiet and frustration over the degree of perceived 'state-capture' within Tasmania's system of governance despite growing calls by the community for rigorous transparency and accountability reforms.

For many Tasmanians, including some holding roles as public officials, there has been a long-held concern over the apparent disconnect between assertions by government members of a commitment to delivering transparency, accountability and integrity with the actual reality against which many members of the public collide. A reality which apparently does not see any problem with undisclosed public relations staff of a corporate vested interest viewing, via a blacked-out video screen, briefings provided by their political opponents to members of the Legislative Council prior debate on legislation posing major ramifications for both stakeholders.[1]

A reality still without a rigorous political donations disclosures regime despite public pressure calling for this oversight mechanisms, and multiple commitments made by consecutive governments and Premiers to deliver (noting that there is a Bill before the parliament at the time of writing, however it falls substantially short of key community expectations).

A reality where rhetoric barely resembles actions undertaken. A reality which reflects a political culture apparently resentful of the need for independent oversight mechanisms, and which seeks to keep them to the bare minimum with the most rudimentary of responsibility, powers and resourcing. A self-reinforcing culture built upon the notion that until there is a proven problem of corruption or unethical behaviour, investment in preventative mechanisms is unwarranted. A political culture comfortable with a limited framework which can be pointed to when convenient but without mentioning those limitations, and which also continues to argue that if there is no proof that a law has been broken, then no moral, ethical or probity breach has occurred - comfortable in the knowledge that it is extremely difficult to test non-legal breach allegations in the absence of a well-resourced and rigorous accountability framework.

Fairly or not, "toothless" is a common descriptor for a range of current Tasmanian statutory or other oversight entities, despite the genuine and diligent efforts of people working within them, reflecting deep-seated community frustration with the apparent 'integrity-lite' and ineffectual state accountability framework.

While a revised, and hopefully strengthened, Lobbying and Lobbyist regulation scheme will not address the entire range of accountability and transparency issues across our governance system, it has potential to begin challenging in a meaningful manner the current political culture of hostility towards effective independent integrity oversight entities. It could provide an important educative role, boost public trust and confidence, additional to any regulatory and compliance responsibilities.

However, to achieve such necessary political cultural reform, any revised Lobbying and Lobbyist regulation regime must be comprehensive, rigorous and place Tasmania amongst the jurisdictions recognised as implementing best practice lobbying administration and compliance oversight regime.

[1] ABC News, *Anti-protest laws briefing sessions for miners, forestry ahead of Tasmanian Upper House debate*, 28 June 2022.

The Integrity Commission's current Reforming Oversight of Lobbying in Tasmania process is predicated upon the fact Tasmania currently has a Lobbyist Register and Lobbyist Code of Conduct. Therefore, this submission will not restate in further detail the case for the need for a Lobbyist regulatory system, as that is considered a given. Instead, this submission will focus on whether the current Tasmanian Register and Code of Conduct is fit for purpose in serving the public interest, and how it can be strengthened. In doing so, the submission will be informed by my personal experience as both someone who seeks to use the lobbyist regulatory system as an accountability mechanism, as well as a Member of Parliament who has been lobbied in the course of undertaking the duties of an elected representative.

This submission is divided in three parts: Part 1 discusses the purpose of regulating lobbyist activity; Part 2 briefly discusses the current Tasmanian context, and Part 3 will then address the Discussion Points as grouped in the Integrity Commission Consultation Paper (May 2022a).

## Part 1: Purpose and Intent of Lobbying and Lobbyist Regulation

When evaluating the current Tasmanian regulatory system and proposing reforms, it is useful to be clear on the intent and purpose of such systems.

A recent study identifies three key goals of, and purposes for, the regulation of lobbying (Ng 2020). These can be summarised as the following:

1) The prevention of corrupt behaviour by lobbyists and public officials;

2) Provision of political equality by ensuring the fairness of public policy formation and decision-making processes by reducing the incidence of secret lobbying by vested interests, reducing the risk of regulatory capture by government while also increasing transparency in the disclosure of lobbying activities; and

3) Ultimately, improving the quality of government decision-making and policymaking by ensuring government decisions are made based on merit, rather than skewed towards narrow sectional interests. This in turn will increase public confidence in the integrity of political institutions (Ng 2020).

The OECD has released its *10 Principles for Transparency and Integrity in Lobbying* (2013) document as well as its more comprehensive 2014 publication, *Lobbyists, Governments and Public Trust, Volume 3: Implementing the OECD Principles for Transparency and Integrity in Lobbying*. The Integrity Commission Research Report provided to inform this review's consultation process groups the OECD's Principles for Transparency in Lobbying into three key purposes similar to the above identified goals of lobbying regulation systems:

1) Building an effective and fair framework for openness and access;
2) Enhancing transparency, and
3) Mechanisms for effective implementation, compliance and review. (ICT 2022b; pg 11)

These two groups of identified key goals and purposes of lobbying regulation systems serve as reference points against which to evaluate the intent and effectiveness of the current and future Tasmanian lobbying regulation framework.

### *Types of lobbying regulation systems*

Academic literature examining the development of international lobbying regulation schemes identifies three types of systems (Chari, Murphy and Hogan 2007):

- **Lowly regulated systems:** rules cover individual lobbyists' registration but require few details additional to the basic. While lobbyists registers may be available for public viewing, details such as who, when and on what subject matter were lobbied are not, neither are spending reports. Systems in this category tend to have little compliance enforcement provisions, and usually no specified cooling off period before former MPs, senior political staff and/or senior public servants can register as lobbyists and undertake lobbying work.

- **Medium regulated systems:** require lobbyists to register and also provide details of whom they are lobbying and on what subject matter. These publicly available registers are updated at frequent intervals. Some medium regulated systems also include requirements for individual spending disclosures, and prohibit giving of gifts. However, these individual spending disclosures to administrators tend not to be available for public scrutiny, and there are no disclosure requirements for employers' spending on lobbying. There is a specified cooling off period before former MPs, senior political staff and/or senior public servants can register as lobbyists. Technically compliance can be evaluated via audits undertaken by the responsible administrators although there is little track record of prosecutions for non-compliance occurring within this type of regulation system. Apparently, the federal tiers of both Canada and the US fall into this category of regulated lobbying system, as do all Canadian provinces and some US states.

- **Strongly regulated systems:** require lobbyists to detail their employers, who they are lobbying and on what subject matter they are lobbying. Any changes to registration details need to be notified almost immediately. Both individual lobbyists and their employers are required to detail spending disclosures which are also available to the public. Cooling off periods are specified before former MPs, senior staff and/or senior public servants can register as lobbyists. Significantly, non-compliance with the regulatory requirements is punishable by prescribed penalties. Apparently nearly half of the US states are examples of this category (Chari, Murphy and Hogan 2007).

Australian academic, Yee-Fui Ng, builds upon this distinction between regulatory system types by identifying the following characteristics: "(1) informal regulation through the broader political process; (2) self-regulation by the lobbyists and the lobbied; and (3) legal regulation of lobbying" (2020, pg 513).

Interestingly, Ng, also asserts that there is a linear time progression pattern which indicates that particular types of lobbying regulation systems were more prevalent during certain phases, "(1) 1983–2006: minimalist executive regulation of third party lobbyists; (2) 2007–09: stronger executive regulation of third party lobbyists; and (3) 2009–16: the emergence of legislative regulation of third party lobbyists" (2020, pg 513).

This is a pertinent consideration in the context of this Tasmanian review, as it indicates that modern and contemporary lobbying regulation systems now tend to be legislated and fall within the strongly regulated system model.

## Part 2: Current Context: the Tasmanian Lobbyist Regulatory System

Currently the Tasmanian lobbying regulatory oversight system consists of the Lobbyist Register and the Lobbyist Code of Conduct, both of which were established in 2009 following the recommendation that such a register be implemented by the Joint Select Committee into Ethical Conduct.[2] From the 1st of July 2022 responsibility for the administration of the Lobbyist Register transferred from the Department of Premier and Cabinet to the Integrity Commission Tasmania.

Section 4 of the Integrity Commission Research Report provides a thorough and succinct analysis of the current Tasmanian lobbying regulation system, including a comparative table detailing the characteristics of interstate and national models, so there is no need to repeat that information here (2022b: pgs 9-17).

According to a recent academic study, the last 30 years has seen an increase in commercial lobbying across Australia from a small industry consisting in a few hundred employees to a 'multibillion dollar a year industry' (Ng 2020; pg 507).

In comparison, as of the 4th of July 2022 there were 66 entities contained in the Tasmanian Lobbyist Register. However, that does not reflect the number of clients for whom these 66 registered lobbyists work. A quick tally across those 66 registered lobbyists reveals a total of 374 clients. Of course, not all of those clients will seek to lobby Tasmanian MPs, political staffers or public servants on state legislation or public policy formation. However, there is nothing to indicate when any registered lobbyist has sought access, on behalf of which client, when, or on what matter.

This exposes how limited, opaque and 'passive' the current Lobbyist Register disclosure system is.

When the characteristics of the Tasmanian lobbying regulation system are evaluated against the identified types of systems discussed in Part 1, the lack of detail disclosed, legislative compliance and enforcement framework places the current Tasmanian system in the lowly regulated category and is also an example of minimalist executive regulation.

However, in one area the Tasmanian system includes a medium regulatory category characteristic, which is its measures to address the 'revolving door' post-employment separation issues by prohibiting certain public officers from lobbying activities for 12 months after ceasing employment.

Despite this, in context of timely and comprehensive disclosure of who, where, when and why to provide public confidence that the public interest is being served at all times, the current Tasmanian regulatory system is definitely at the lower end of the established spectrum.

Below is a series of screenshots depicting the different nature of information available on a selection of current Lobbyist Registers:

[2] Recommendation 33, *Final Report: 'Public Office Is Public Trust'*, Joint Select Committee on Ethical Conduct, 2009.

***Figure 1. Tasmanian Lobbyist Register (as of 5 July 2022)***

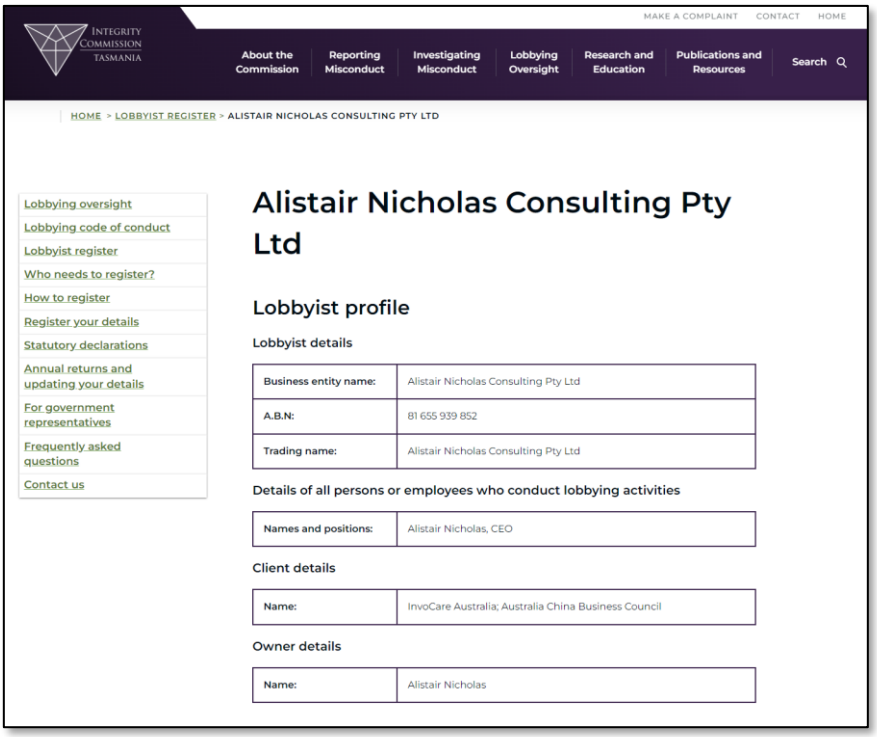



***Figure 2. Ireland Lobbyist Register (as of 5 July 2022)***

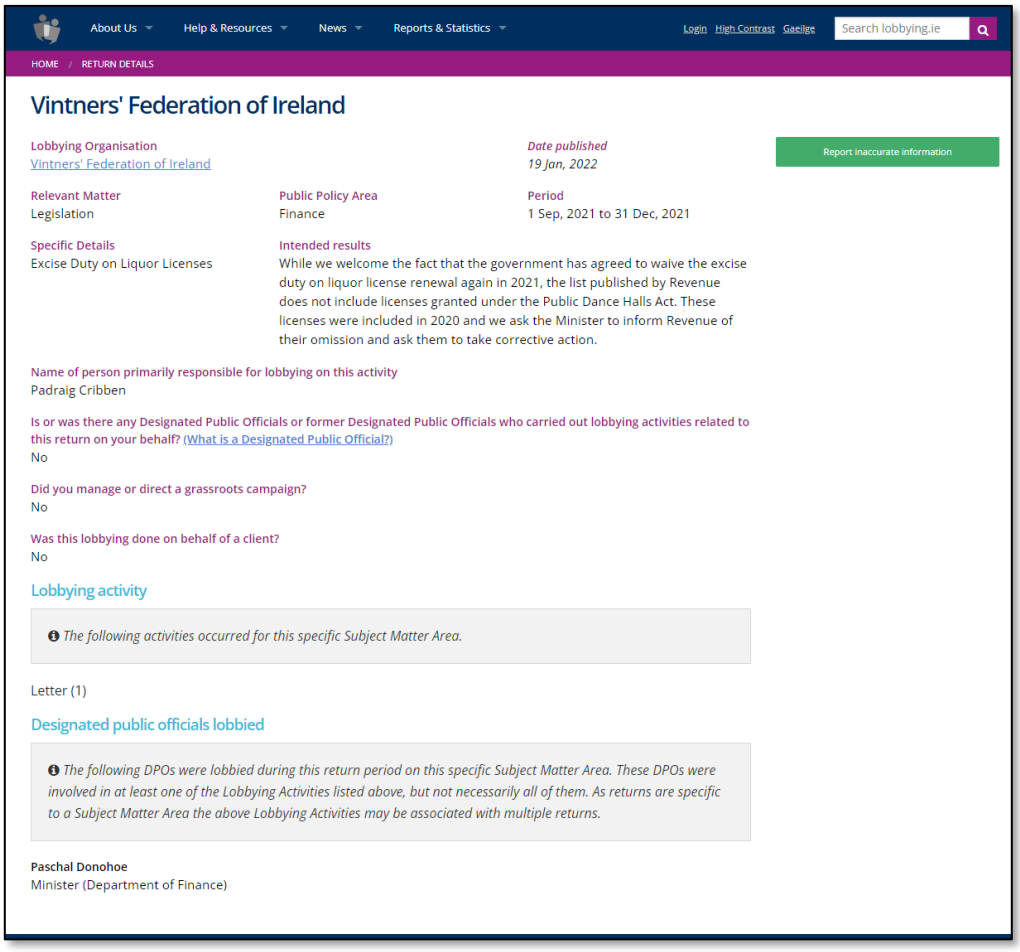


***Figure 3. Queensland Lobbyist Register example 1: Lobbyist's details (as of 5 July 2022)***

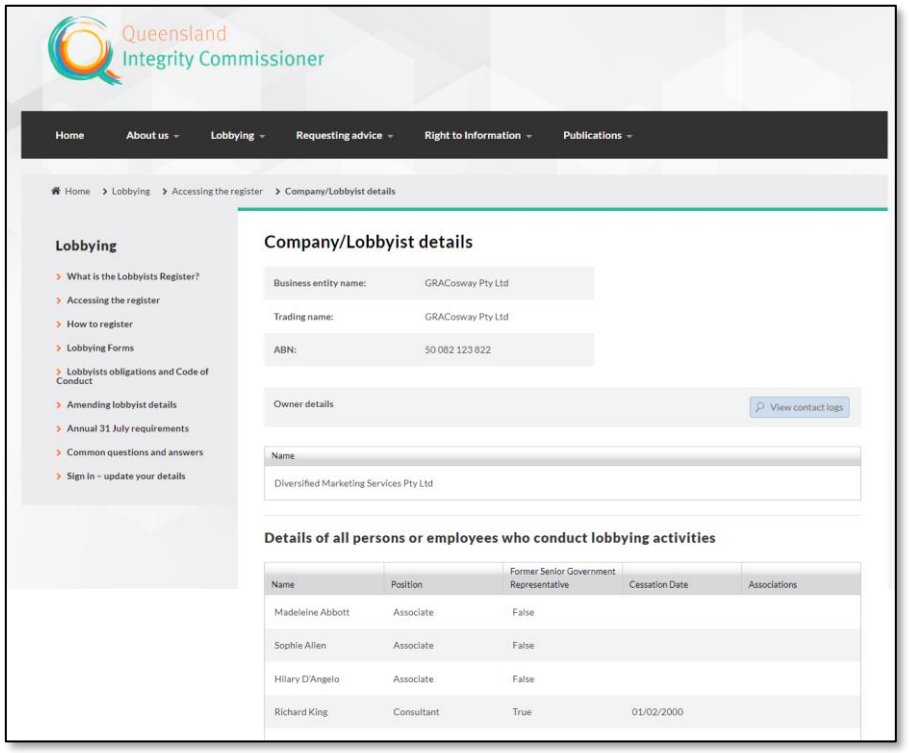
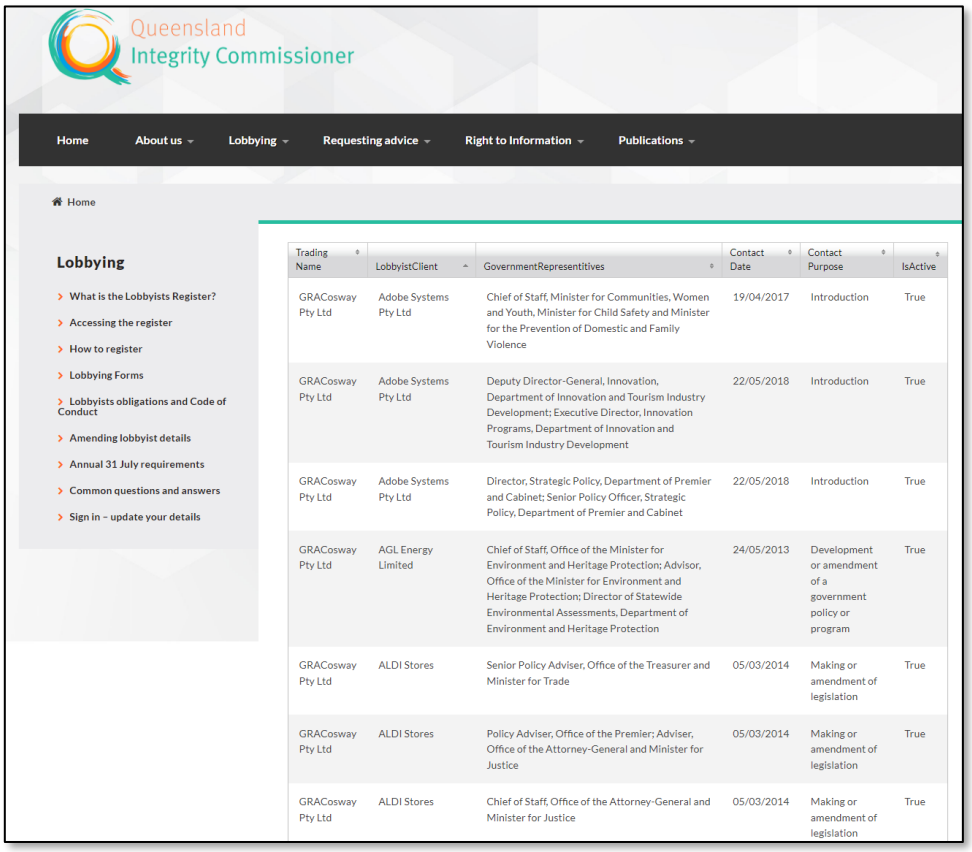



***Figure 4. Queensland Lobbyist Register example 2: Lobbyist contact logs (as of 5 July 2022)***



Figures 1 to 4 demonstrate the range of lobbying details made available for public scrutiny. They particularly highlight the Tasmanian Lobbyist Register's lack of meaningful detail on lobbying activities and its emphasis instead on only recording Lobbyist details.

Despite Queensland's Lobbyist Register requiring more meaningful information disclosure than the Tasmanian Register, the recent Coaldrake Final Report into the Queensland public sector culture and accountability raises the idea that:

> *"consideration might be given to changing that name of the register to the Lobbying Register (rather than the Register of Lobbyists) to reflect that the regulatory focus is on the substance (lobbying activity) rather than form (i.e. whether or not the person calls themselves a lobbyists or not)" (2022; pg 53).*

When evaluated against established best practice lobbyist regulatory criteria, intent and purposes, the current Tasmanian lobbyist regulatory system cannot be considered either best practice or fit for purpose. Since its establishment, its minimalist structure has reinforced the sense of opaqueness regarding access to, and influence over, government decision-making processes, and the Tasmanian community's sense of distrust and disquiet over the state of our governance systems.

As an example of minimalist executive regulation, Tasmania lags behind other interstate lobbying regulatory models across key criteria including range of those to whom regulation applies, degree of information required to be disclosed, and compliance and enforcement.

## Part 3: Key Consultation Paper Discussion Points

***1. Should all Members of Parliament be included?***
***2. Should all state servants and bureaucrats be included or only those most senior?***

In his recently released Final Report, Coaldrake revisits the origin of the term 'lobbying':

> *"While almost all decisions of government entail some level of legitimate lobbying, the term itself dates back to the 19th century and derives from the lobbies and corridors around parliamentary chambers in the United Kingdom and the United States (US). These were the places where wheeling and dealing occurred before matters were formally presented.*
>
> *These days, however, the 'lobbying' term has come to refer to paid advocacy by professionals on behalf of third parties, to activity conducted in private behind closed doors. It is therefore highly relevant for a Review such as this [Coaldrake] which is interested in an increased level of sunshine upon the operations of government"* (2022: pg 47).

Despite Queensland now having a lobbying regulatory system recognised as one of the strongest nationally, Coaldrake also states, "the role of influence has been a constant undertone to this Review. The current visibility of paid lobbying, with its impact on public perception, highlights a serious issue (2022: pg 2).

It stands to reason that the lobbying activities once occurring in 'lobbies and corridors' and now 'behind closed doors' is not limited to only government ministers or their staff. For matters outside the scope of immediate Executive Orders and which require the involvement of non-government MPs, such as long-term policy positions and legislation, it is to the benefit of lobbyists and their clients to develop broader support, and therefore it can be perceived as a wise investment to also secure the support of Opposition parties and independents. This is particularly pertinent in Parliaments or specific Chambers in which the government of the day may not hold a clear majority, with the passage of legislation requiring the support of some none-government MPs additional to government members.

The fact that non-government MPs are also recipients of lobbying efforts, distinct from individual constituent contacts, indicates that there is a recognised purpose for this activity by those undertaking it. Lobbyists probably would not bother lobbying non-government MPs if they did not perceive some potential benefit could be derived from that effort. Similarly, why would clients pay for lobbyists to undertake that work on their behalf if they did not think it was a worthwhile investment in some way? Hence if lobbyists and their clients consider it worthwhile to lobby Opposition parties and their senior staff, and independent MPs, then it is also in the public interest for this activity to be disclosed.

This is recognised by the current Queensland Lobbying regulation system which requires the lobbying of the following parliamentary actors to be declared: the Premier or Minister, Assistant Minister, ministerial staff, assistant ministerial staff, Leader of the Opposition, Deputy Leader of the Opposition, a staff member of the Leader of the Opposition's office (ICT 2022b: pg 14). Entries in the Queensland Lobbyist Register can be found detailing activities involving Opposition MPs, on identified legislative matters.

South Australia goes further by including all Members of Parliament and their staff, as well as Ministers, Parliamentary Secretaries and ministerial staff (ICT 2022b: pg 14).

Clearly, this lobbying activity of non-government members would not only occur in states which regulate that behaviour. Tasmania has recent examples well established on the public record, including the infamous role of local gaming industry proponents' apparent efforts to influence political parties' respective gaming policy, particularly in relation to poker machines, during and after the 2018 state election campaign.

***Case-Study: Apparent Influences on Recent Tasmanian Poker Machines Policy 2018-2021***

In the lead up to the 2018 Tasmanian state election the Tasmanian Labor Party revised their previous policy position on poker machines and announced instead a position to roll back poker machines from pubs and clubs and instead restrict pokies to the two casinos in the state.

- Pro-gaming and pokies interest groups, such as the Tasmanian Hospitality Association (THA), reacted strongly against the new Labor policy position, and during the state election ran a well-resourced public campaign against both the Labor Party and its gaming policy position and other candidates and parties also campaigning on anti-pokies platforms. Labor did not secure government at this election.
- In 2019 the Labor Leader was reported as saying the Party would not be taking the 2018 pokies roll-back policy to the next state election (ABC News February 2019).
- In March 2021 a signed Memorandum of Understanding(MOU) between the THA and Labor was leaked to the media, and subsequently released by its signatories, formally reiterating the Party's abandonment of its 2018 policy position to remove pokies from pubs and clubs, and its subsequent commitment to supporting "the rights of pubs and clubs to operate poker machines" (ABC News March 2021). This was the policy position the Labor Party then took to the 2021 May state election.
- This revisited pokies policy was then the basis upon which the Tasmanian Labor Party supported the Liberal government's contentious *Gaming Control Amendment (Future Gaming Market) Bill 2021* when debated in November 2021. If Labor still held the 2018 pokies policy position at the time of the 2021 Bill's debate, the numbers in both Chambers at that time would have meant passage of the Bill was not guaranteed, nor that considerable and substantial amendment to the Bill would be avoided.
- Additionally, the 2021 MOU details an undertaking that the THA CEO meets with the Leader of the Labor Party every quarter.
- Upon the leak of the MOU, the THA CEO was reported as saying, "*It's my job as a lobbyist to make sure [I do] whatever I can for the industry, mate*" (ABC News March 2021. This statement makes clear the THA CEO perceived his role to be that of a lobbyist and the MOU as a (successful) outcome from lobbying activity.

***Case-study analysis:*** While noting that the above scenario does not detail any illegality, it raises serious concerns regarding an apparent entrenched political culture of acceptance of potential influence from specific quarters, and an acceptance of vested interests holding equivalent, if not greater, weight than the public interest.

- Further, despite the Tasmanian Lobbyist Register being in force at the time due to its limitations there is a real probability that if it was not for the media leak the Tasmanian public would not have known at the time of the 2021 state election that this MOU - which has direct bearing on public policy 'live' at the time of that state election – had been undertaken.
- Under the current Tasmanian lobbying regulation system the THA is not on the Lobbyist Register, and does not need to be as, in the MOU scenario, presumably the Association was acting on its own behalf and not on behalf of a third-party client.

- Even if the THA was on the Lobbyist Register, any MOU-related contacts/emails/discussions between that entity and the Opposition Leader and/or senior staff of the Opposition Leader would not be considered as "lobbying activity", and nor would any of the committed ongoing quarterly meetings, as "lobbying activity" is defined as "communications with a Government representative".
- Hence, from the perspective of the Tasmanian public the state's lobbying regulatory system failed to provide timely or transparent information regarding:
    - The THA, an industry actor with a clear perceived vested interest, undertaking lobbying activity (as stated by the CEO in the above-cited ABC News report);
    - Lobbying activity targeting Opposition MPs and/or political staff;
    - whether any other registered lobbyists on behalf of clients also contacted Opposition MPs, independent MPs, and/or political staff over pokies policy formation, and if so who, when and how frequently.
- Currently, nor does the lobbying regulation system provide transparency over whether the 2021 MOU's quarterly meetings have been undertaken, and if so when and what was discussed.
- As equally disturbing is the fact that the Tasmanian public would also remain uninformed of any lobbying contact between self-proclaimed but non-third party lobbyists, such as the THA, and Government MPs and Ministerial staff. Even should a registered third-party lobbyist listing the THA as a client meet with a Minister and /or senior staff, whether once or on a quarterly basis, to undertake lobbying activities – none of that information is required to be disclosed publicly either.

### *Members of the Legislative Council*

As an independent elected representative to the Tasmanian Parliament's Upper House I can state that as part of the current work undertaken in accordance with our parliamentary and electorate duties, both political party affiliated Legislative Councillors and independents are recipients of third-party lobbying efforts by those listed on the Lobbyist Register, and those who are not acting on behalf of a third party (the latter excluding routine constituent and stakeholder contact).[3]

Again, while the above is not illegal, from the perspective of the Tasmanian community it can raise valid concerns regarding potential influencing factors impacting the success, or otherwise, of legislation and other parliamentary debates.

This is particularly pertinent in context of the Legislative Council which historically has not been dominated by any one particular political party, and therefore the government of the day has not had majority control, and instead needs to convince independents and representatives of the Opposition on the merits of each piece of legislation. Therefore, it is unsurprising that Members of the Legislative Council (MLCs) are 'lobbied' regularly by a broad range of individuals and organisations including those on the Lobbyist Register, on matters of public interest.

Therefore, it should also be in the public interest for such potential influence to be disclosed in as transparent and timely a manner as possible. However, under the current regulatory requirements none of that contact needs to be disclosed to the public, whether involving independents, Opposition MLCs, or MLCs who are Ministers or Parliamentary Secretaries.

[3] In this context 'stakeholder' refers to individuals and entities specifically excluded from the current Lobbyist Register and Code of Conduct definition for lobbyist, ie non-profits such as TASCOSS.

### *1. Should all Members of Parliament be included?*

**Yes, all Members of Parliament should be covered by the state's lobbying regulation system.**

As discussed above, the Westminster Parliamentary system provides opportunities where non-government MPs can influence or determine the outcome of parliamentary debates, including legislation. The public record contains examples of non-government MPs being lobbied, and clearly those undertaking the lobbying activity, whether third party or otherwise, would not expend such time and energy if there was no point in doing so.

Additional to Queensland where the Opposition Leader, Deputy Opposition Leader and staff in the Office of the Opposition Leader are included, South Australia's *Lobbyists Act 2015* includes all Members of Parliament under its definition of 'public official', whom may be communicated with by those engaged in lobbying.

If it is perceived worthwhile and to be in the interests for third party or other lobbyists to lobby non-government MPs, then it is worthwhile and in the public interest to include such activity in any transparent and rigorous lobbying regulatory system.

### *2. Should all state servants and bureaucrats be included or only those most senior?*

Currently Ministerial staff and Heads of Agencies are covered by Tasmania's lobbying regulatory system. In contrast all other national states and the Commonwealth's respective systems include all persons employed, contracted or engage in the public service. This is also consistent with other international examples of strongly regulated lobbying regimes including Ireland and Scotland.

Again, the principle of 'if those investing in lobbying consider it in their interests to communicate on matters of policy, grants, legislation development, for example with members of Tasmania's State service, then it should also be in the public interest for this to be disclosed' should apply.

Similarly, as previously discussed, when seeking to reset a culture to one which recognises the need, and takes responsibility, for genuine transparency and accountability, establishing clear expectations and guidelines that all those paid by the public purse must demonstrate they are working in the public interest may contribute to that cultural transition.

Some may try and argue the issue of 'over-regulation' and concerns of time and resource consumption taken to comply with regulation, as an objection to including all those employed under the *State Service Act 2000*, or are contracted by the state sector. Another objection may be that employees must comply with the prescribed Code of Conduct anyway, so this could just be duplication.

However, waiting for potential breaches to Codes of Conduct is insufficient to foster a culture of proactive transparency and accountability. The intent of lobbyist regulatory systems is to allow the public to see who may be investing money and time to influence governance decision-makers, which is not in itself conveyed merely by an understanding that Tasmania's public sector employees abide by a Code of Conduct. Ironically, in the argument of over-regulation, the existence of a Code of Conduct becomes an obstacle to the honest transparency it espouses! Importantly, clear, rigorous and standardised lobbying disclosure requirements is an investment in protecting state service employees from unfounded suspicion.

Further, other jurisdictions have developed standardised reporting templates which can mitigate the reporting onus upon state sector employees and contractors, and Tasmania could take a similar approach.

Government Business Enterprises and State Owned Companies should also be included in the state's lobbying regulatory system. It has been reported recently that TasNetworks has engaged a registered

lobbyist.[4] It stands to reason that if Tasmanian GBEs and SOCs see the need to engage in lobbying, and as entities which can provide information to MPs which may influence policy decision outcomes, as well as grant contracts for example, potentially they will also be the target of lobbying.

### *Local government elected members*

The Research and Consultation papers provided are relatively quiet on whether Tasmania's lobbyist regulatory system should be extended to include local government elected representatives and/or senor council staff, General Managers for example.

Tasmania is not alone in its exclusion of the local government tier from this particular accountability mechanism. However, given the well reported devolving of considerable responsibilities from the state to the local government tier, and the crucial role councils play in the development, construction, planning and service delivery sectors, there is merit in considering expanding the application of the lobbying regulatory system to include local councillors and at least senior council staff.

Queensland currently appears to be the only Australian jurisdiction which includes local councillors in its lobbying regulatory system.[5]

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### *3. What standards of behaviour or conduct should be included in a code of conduct?*

### *4. Should lobbyists be prohibited from giving gifts to people who are lobbied?*

### *5. Should a lobbying code of conduct include standards of conduct for both lobbyists and people who are lobbied?*

It is difficult to perceive the purpose of gift-giving between lobbyists and those lobbied if it is not intended to elicit some form of favourable response at the best, and at the worst a sense of obligation. From the public perspective, gift giving 'muddies the water' unnecessarily and can immediately raise suspicions unfounded or otherwise.

While lobbying is recognised as a legitimate form of democratic engagement, it is also an activity recognised as fraught and poses the potential for damaging the integrity of our democratic systems of governance. Therefore removing unnecessary components which can fuel public distrust and disquiet, such as the giving of gifts is a simple step towards a more robust merit-of-ideas rather than purchase-of-access system.

The banning of gifts also removes another area of required disclosure and regulation.

### *Codes of Conduct*

Principle 8 of the OECD's *Principles for Transparency in Lobbying* states that, "lobbyists should comply with standards of professionalism and transparency; they share responsibility for fostering a culture of transparency and integrity in lobbying (Brochure 2013).

The goals of effective lobbying codes of conduct are summarised by Ireland's Code which states, "…this Code of Conduct and associated regulations, guidelines and standards of conduct applicable to Office Holders, elected representatives and public servants, aims to ensure that lobbying activities are conducted in accordance with public expectations of transparency and integrity, and that decisions are made in the public interest" ( Standards in Public Office Commission (Ireland), 2018).

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[4] As reported by the *Tasmanian Inquirer*, 'TasNetworks asked to explain why it hired Liberal-linked lobbying firm,' 16 May 2022.

[5] See s.44, *Integrity Act 2009 (Queensland).*

There should also be an equal responsibility by those lobbied to also comply with standards of professionalism and transparency. This shared obligation by both lobbyers and lobbied to the highest and standards should be detailed in clear and publicly available codes of conduct.

The current Queensland Lobbyist Code of Conduct, and also Ireland's Code of Conduct published by the Standards in Public Office Commission 2018, serve as sound guides upon which to model a strengthened Tasmanian code of conduct for both lobbyists and those being lobbied.

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***6. What activities, if any, should be exempt from the definition?***

***7. Should registerable lobbying activity be triggered by one communication only?***

***8. What sort of contacts, communications or other actions should be included as lobbying activities?***

Legislative experience tells us that the process of defining specific individual actions can inadvertently mean that related activities left undefined are then left out and are not covered despite the intent of the legislation, code or regulations. Detailed definitions can also become dated quickly should new modes of communication develop due to technological advances. However, definitions which are too broad can also have unforeseen ramifications.

Therefore, and particularly in relation to discussion points 7 and 8, the principle of 'if it is considered worthwhile action to take by lobbyists, then it is worthwhile disclosing in the public interest' should provide a working baseline.

While noting the OECD's warning that it may not be appropriate or workable to merely 'copy and paste' from one jurisdiction's regulatory system to another's, referring to modern strong regulatory systems such as Queensland, Ireland and Scotland provide robust and tested models upon which to develop a best practice system for Tasmania.

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***9. How should the term 'lobbyist' be defined?***

***10. Should the regulatory system include only third-party lobbyists or be extended to include in-house (employed within the company doing the lobbying) and other lobbyists?***

***11. Is receiving payment or setting an expenditure limit an appropriate test for a lobbyist to be included?***

***12. If in-house lobbyists are to be included, should percentage of time spent lobbying be an appropriate test for inclusion?***

***13. If in-house lobbyists are to be included, should the number of employees in an entity be used as a qualification test?***

***14. What information should lobbyists be required to provide when they register?***

Both the definition of 'lobbyist' and the regulatory system need to be expanded to include in-house and other lobbyists additional to third-party lobbyists. As demonstrated by the case study discussed previously, corporate entities who even describe themselves as lobbyists currently do not need to register as such, and nor are their lobbying activities regulated.

The ongoing omission of such political actors from the regulatory system is a form of system self-inflicted blindfolding, and which actively contributes to the erosion of public trust in public policy and decision making processes and outcomes.

As stated in the Integrity Commission Research Report the undermining of attempts to regulate lobbying activities by excluding in-house lobbyists has been raised by academics and oversight bodies such as the NSW ICAC and the Queensland Crime and Corruption Commission's Integrity Summit held in 2021, which refers to the potential ramification of excluding in-house lobbying as creating the "real weakness" of the potential for "soft corruption" (ICT 2022b: pg 24).

This assessment of the extent and potential ramifications of in-house lobbying was also reiterated in the recently released Coaldrake Final Report which states, :

> "On balance, this Review considers that lobbying activity conducted by professional firms ought to be captured, and included in any register of lobbyists and lobbying… Those who consulted with the Review overwhelmingly described an environment where the lobbying activities of some consulting firms are indistinguishable from those of registered third-party lobbying firms" (2022: pg 51).

The inclusion of third-party, in-house or other forms of lobbyists should be determined by whether their activities fall into a prescribed definition of 'lobbying activity' rather than potentially manipulatable and fluctuating factors such as payment, expenditure, time allocated, or employee numbers. These forms of determinants appear to require a potentially unnecessarily complicated and bureaucratic regulatory and compliance regime. Further, it potentially opens up a range of contestable and 'fudgeable' loopholes.

Upon registering, lobbyists should include the following information, additional to standard contact details:

- Whether acting as a third-party lobbyist, or another form of lobbyist
- Areas of interest, ie Development, or education etc
- Number and position of staff engaged in lobbying activities
- Whether any lobbying staff have previously been Members of Parliament, ministerial staff or senior staff for non-government MPs, Heads of Agencies, and detail post separation dates, and date of joining lobbyist entity
- Whether political donations have been made to any political parties and/or public officers and provide links to most recent political donations disclosures
- Spending reports

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***15. What information should be disclosed on an online register?***

***16. Should public officers disclose diaries or other information disclosing communications with lobbyists?***

***17. If lobbyists and people who are lobbied are to make disclosures, how frequently should this happen?***

***18. Would disclosures be more likely or reliable if they were made by government representatives rather than lobbyists?***

Current requirements for Tasmanian registered lobbyists to update any changed entity details within ten days of the change occurring still appears sound and should be maintained. However, updating and keeping current lobbyist contact details should be treated as distinct to substantive disclosures regarding lobbying activity. This distinction between entity and activity is recognised in both the Irish and Scottish disclosure requirements, which should be adopted by Tasmania as well.

This would see a consolidation of all communications and lobbying activity undertaken by a lobbyist on a particular issue or subject matter provided on the same disclosure return. This system avoids unnecessary duplication on behalf of the compiler, when stating what each piece of communication relates to, while also providing clarity regarding the subject matter, purpose, intent, those involved and when the lobbying activity occurred.

Lobbyists should be required to provide as a minimum the following information on an online register:

- Which public officers were lobbied
- When public officers were lobbied
- Method of contact, and frequency of contact with identified public officers
- The purpose and substance of the contact, including subject matter and whether, and if so which policy/regulations/programs/ legislation was the focus of discussion
- Desired and intended outcomes from the contact

As identified by the Integrity Commission Research Report (2022b), currently Ireland and Scotland provide the most comprehensive and meaningful lobbyist disclosure requirements, which would serve as sound prototypes for Tasmania's consideration.

### *Release of Diaries*

The public disclosure of ministerial and senior ministerial staffers' diaries should be a matter of routine as a core component of the state's lobbying regulatory system. Similarly, this form of lobbyist contact disclosure should be extended to all other defined public officers.

This is reinforced by the Coaldrake Final Report which states:

> *"This Review has taken the view that the onus rests with ministers and their staff to faithfully record lobbying interactions and publish them through the ministerial diaries. Registration and recording of lobbyists activities should cover third party lobbyists (as now) as well as those carrying out lobbying functions as part of their suite of professional services. More comprehensive ministerial diaries (recording ministerial staffers' interactions as well as ministers) will record other interactions with in-house lobbyists and peak bodies" (2022: pg 47).*

The Coaldrake Report continues:

> *"… Diaries are a tool of accountability. They need to be a more effective tool. More detailed and informative ministerial diaries are essential to this**. The diaries of ministers and their staff should include all external contacts designed to influence government decisions. The diaries should readily link to the lobbying register and should be more easily accessible and searchable by the interested public than the current system through which each minister's diary is published each month in PDF form**. This is a relatively simple IT systems fix that, in company with a broadening of the lobbyist definitions, will create a transparent system in which the public can have confidence and through which businesses, unimpeded, can go about their activities with government" (2022: pg 54).*

This is currently not the situation in Tasmania. For example, in November 2021, I submitted the following three Parliamentary Questions to government:

- Question 1:
  (a) Can the Government advise if, since May 2021, the Premier or any Ministers met with:
  (i) non-industry and community stakeholders;
  (ii) gaming and hospitality stakeholders; and
  (iii) registered lobbyists
  to discuss any aspect of gaming policy including the *Gaming Control Amendment (Future Gaming Market) Bill 2021;* and
  (b) if so, can the Government provide diary details including meeting dates, times and names and positions of all attendees?

- Question 2:
  (a) Can the Government advise if, since May 2021, the Premier or any Ministers met with:
  (i) non-industry and community stakeholders;

(ii) industry stakeholders; and
(iii) registered lobbyists
to discuss any aspect of vocational education skills and training policy including the TasTAFE (Skills and Training Business) Bill 2021; and

(b) if so, can the Government provide diary details including meeting dates, times and names and positions of all attendees?

- Question 3:

(a) Can the Government advise if, since May 2021, the Premier or any Ministers met with:
(i) non-industry and community stakeholders;
(ii) industry stakeholders; and
(iii) registered lobbyists
to discuss any aspect of container and waste management policy including the *Container Refund Scheme Bill 2021;* and
(b) if so, can the Government provide diary details including meeting dates, times and names and positions of all attendees?

Four months later, on the 8th of March 2022, in response to those three separate questions regarding potential lobbying associated with three different pieces of legislation, I received the same answer:

> *"(a) As would be expected, Members of the Government consult widely with many and varied stakeholders on a regular basis. This includes stakeholders from the non-government and not-for-profit or community sectors, business, industry and volunteer-run organisations. It is important to note that stakeholder engagements may canvass a range of matters and are an essential part of delivering good government.*
> *(b) This would be very difficult and resource intensive as Members of the Government meet regularly with many and varied stakeholders on a wide range of matters."*[6]

This response appears to deliberately ignore the subsection (a) (iii) specifically requesting any meetings with registered lobbyists. If their activity and contact over the specified six month period was so extensive that collating it would be too "resource intensive" and onerous, then that in itself raises concerns over the potential perception of undue influence on current public policy debate.

This example of a government response for information routinely provided by other national and international jurisdictions clearly does not comply with the OECD's *Principles for Transparency in Lobbying*, or meet current community expectations of government accountability and integrity.

As stated in the Coaldrake Final Report, "ministerial diaries provide an important complement to the lobbying register, particularly in circumstances where not all lobbying activity is captured by the Act" (2022: pg 53). I can only reiterate Coaldrake's position in the Tasmanian context, while also emphasising that should designated public officers be expanded to include Opposition parties and independent MPs then it would be a matter of consistency for the same transparency requirements to apply to these groups as well.

Again, for transparency and consistency's sake, MPs staff who participate in lobbying activity by being the recipient of those efforts, should also be required to document and disclose that interaction. National and international jurisdictions have developed templates to assist in the consistent, standardised and time efficient collation of details required for such diary entries, which could be adapted for local use.

[6] Questions and government response available at: https://megwebb.com.au/questions-lobbying-and-stakeholder-consultation/

### *Frequency of Lobbying Activity Disclosures*

As stated above, the current 10 days timeframe in which changes to a Lobbyist's contact and operational details should be updated should be maintained.

However, disclosures regarding lobbying activity by lobbyists may require a different degree of frequency.

Given online and technological capacity to deliver swift and contemporaneous disclosure, lobbying activity by lobbyists should be disclosed in a timely manner, but without the frequency of such becoming an excuse to provide minimal details. As noted in the Integrity Commission Research Report (2022b) Queensland's current requirement for lobbyists to submit a disclosure 15 days after the end of each month is facilitated by an online mechanism utilising drop-down menu options, which provide generic categories rather than significant detail of actual activity undertaken.

Timeliness of disclosures has become a common theme across a range of public transparency and integrity debates, such as political donations disclosures reform. A key element of the current public debate is a growing frustration that pertinent information is released 'too late' or after decisions have been made, and legislation passed. This pattern has fuelled cynicism and eroded public trust in our governance structures.

Ireland's model of requiring substantive Lobbyist activity based returns to be filed every quarter would help address this ongoing public frustration over the lack of timely release of pertinent information, particularly within a parliamentary or an election context.

Currently, annual reporting say of political donation disclosures for example, is flawed as legislation could be debated and passed before required returns are disclosed to the public. Should that annual model be adopted for lobbyist activity disclosures, then we could still see this pattern reinforced where potentially legislation could be introduced, debated and passed before pertinent lobbyist disclosures are made public. This risks the too familiar scenario where MPs and the public discover after the fact, whether lobbying on a particular Bill occurred, by whom, to whom, when, and what was sought by the lobbyists involved.

If a regulatory system is going to require information of this nature, then it stands to reason it should be available to inform and contribute to any associated public debate.

Lastly, discussion point 18 presumes that the future Lobbying regulatory system will still only include members of government, including state service employees, rather than Opposition parties and independent MPs.

Requiring the lobbied to disclose relevant diary records as well as requiring lobbyist disclosures provides a more rigorous and comprehensive accountability and transparency environment. It provides a cross-referencing mechanism for both regulators and the public.

Also, given the context that lobbying is a recognised activity within our democratic system, another important principle of democracy is to be able to speak for oneself. That principle for self -determination, coupled with community expectations that those involved will take responsibility for their own actions should apply to both the lobbyists and the lobbied to each contribute to the transparency of the state's lobbying regulatory system.

This point of dual accountability was also emphasised by the Coaldrake Final report:

> *" … the report on 'Australia's National Integrity System: The Blueprint for Action' (**NIS Report**) notes that tackling undue influence requires more than simple transparency: 'Current lobbying regimes also do little to reinforce the responsibility and authority of decision-makers to resist undue influence, as opposed to place administrative requirements on lobbyists to record and publish their*

*activity'. The need to reassert the onus on ministers and other decision-makers has been central to the Review's considerations, recognising that current conditions are relatively recent" (2022: pg 49).*

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***19. Does Tasmania need specific legislation to empower the Integrity Commission to provide compliance measures?***

***20. What, if any, sanctions should be included as part of a lobbying regulatory system?***

As identified by academic comparative studies, lobbying regimes identified as 'strongly regulated systems' are supported by specific legislation. Additionally, that appears to be the pattern also adopted by more current systems (Ng 2020).

One study found:

> *"Actors in highly regulated systems were more likely to agree, compared to actors in lowly regulated systems, that regulations help ensure accountability in government. In other words, the stronger the rules are, the more accountability is fostered in the political system. It was also found that actors in higher regulated systems are more likely to strongly agree that they are knowledgeable about legislation. In this scenario, the tighter the rules are, the greater is the responsibility that actors feel to study them" (Chari, Murphy and Hogan 2007: pg 432).*

Hence, there is evidence that legislation encourages education and training on lobbying activity intent, responsibility and compliance. This in turn should foster improved public trust and confidence in the regulatory system's robustness and integrity.

Importantly, it can also clarify procedures regarding perceived breaches and non-compliance, where complaints can be made, and reassure those complaints will be dealt with in a clear transparent and independent manner.

I support the development of specific legislation to empower the Integrity Commission in its oversight role of the Lobbyist Register, and to ensure compliance with the lobbying regulatory system. Further, any legislation should include a mandated review of the Act to occur no less than every five years, in recognition of the fact that transparency and accountability expectations evolve, as does technology which may also have bearing on the nature of lobbying activities as well as reporting and compliance mechanisms.

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***21. Are bans on public officers moving into lobbying roles appropriate?***

***22. How long should the 'cooling off' period be before public officers can become lobbyists?***

***23. Which public officers should be subject to cooling off periods?***

Issues regarding the 'revolving door' have been well canvased in scholarly literature, and independent reviews undertaken by some jurisdictions, some of which have been summarised in the Integrity Commission Research Report 92022b).

Despite the broad awareness of the corrosive effect the 'revolving door' can have on public trust and good governance, Australian jurisdictions attempts to impose meaningful 'cooling off' periods appear lacklustre at best. This could be due to the vested interest of MPs when faced with being asked to proactively vote to limit their potential post-parliament future options.

Currently Tasmania's 12 month cooling off period applies only to ministers, parliamentary secretaries, and heads of agencies.

Presuming the definition of public officers is expanded, public officers should be required to abide by a mandated 'cooling off' period before signing up and undertaking work with, and/or as, a lobbyist.

Recognising the range of specified time limits before public officers can move into lobbying, this submission contends that Tasmania should consider increasing its restrictions on post-term employment as a lobbyist to two years. At a minimum, it should not be less than the current 12 months.

### *'Dual-hatting of lobbyists'*

It is worth noting that recently the Queensland government announced its intention to implement a recommendation from the Coaldrake Review to ban the practice described as 'dual hatting', which sees lobbyists working as political campaigners for political parties during election campaigns.[7]

The imminent ban will seek to prevent previous scenarios which saw lobbyists who had worked for political parties contesting state election campaigns then switching back to their lobbying role and lobbying the resulting government on behalf of clients.

A similar ban on lobbyist 'dual-hatting' should also be considered for Tasmania.

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### *24. Should receiving or paying success fees be prohibited?*

Tasmania is currently a national outlier in its regulatory system's silence on the matter of lobbyists receiving success fees from their clients.[8] The receiving, and the offering, of such success fees should be clearly defined in legislation and banned.

Success fees, or bonuses based upon lobbying efforts, dangerously legitimises the apparent relationship between political access and influence with financial incentive and benefit – the very relationship which is at the core of perceived, potential and actual corruption.

Whether such success payments to lobbyists have been made or not within the Tasmanian context, the fact that they can be made and received actively undermines both the integrity of the current administration and regulation system, and public confidence.

It would be consistent with the intent of best practice lobbying regulatory systems to mitigate the corrosive and pernicious effect of money on our system of governance to prohibit the receiving or paying of success fees.

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## Conclusion

The stated goal of the Integrity Commission's review of the state's current lobbying regulation scheme is, "… to establish a lobbyist system that is robust, efficient and transparent, and that leads to increased public confidence in decision-making by our elected representatives and public officials" (ICT, Research Report, May 2022, pg 2).

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[7] See Joint media statement released by Queensland Premier and Deputy Premier, "*Taskforce to implement Coaldrake recommendations*, 4 July 2022.

[8] As stated in the ICT, *Research Report: Reforming Oversight of Lobbying in Tasmania*, May 2022; pg 37.

The recent announced transfer of the administrative responsibility for the Tasmanian Lobbyist Register and Code of Conduct from the Department of Premier and Cabinet (DPAC) to the Integrity Commission is a very welcome move and one which will assist in delivering that stated goal. It should go without saying that independent oversight of this vital transparency and accountability regulatory system is fundamental to ensuring Tasmania has a fit for purpose lobbyist and lobbying regulatory system, and one which inspires confidence and public trust in the rigor applied to its administration and compliance evaluation responsibilities.

The OECD's Principles for Transparency in Lobbying provides the following key goals for proposed regulatory systems:

1. Building an effective and fair framework for openness and access;
2. Enhancing transparency, and
3. Mechanisms for effective implementation, compliance and review. (ICT 2022b; pg 11)

As discussed in this submission, national and international studies show that lobbying regulatory systems proven to be the most effective in delivering those key goals do so by:

1. Working to prevent corrupt behaviour by lobbyists and public officials;
2. Providing political equality by ensuring the fairness of public policy formation and decision-making processes by reducing the incidence of secret lobbying by vested interests, reducing the risk of regulatory capture by government while also increasing transparency in the disclosure of lobbying activities.
3. Ultimately, improving the quality of government decision-making and policymaking by ensuring government decisions are made based on merit, rather than skewed towards narrow sectional interests. This encourages public confidence in the integrity of political institutions (Ng 2020).

These systems tend to be categorised as 'strongly regulated systems' (Chari, Murphy and Hogan 2007).

It has taken over a decade since the establishment of Tasmania's Lobbyist Register in 2009, for a comprehensive review of its effectiveness to be undertaken. In that context, it cannot be overstated the significance of the opportunity presented by this review to undertake serious and meaningful reform to strengthen Tasmania's lobbying regulatory system.

While recognising that it is not always appropriate to 'copy and paste' elements from other jurisdictions, we are in a position where we can benefit from national and international models tried and tested since 2009, and which are also still open to ongoing continual improvement. For example, although Queensland has a widely recognised modern and robust lobbying regulatory system, in light of recommendations made by the 2022 Coaldrake Review further refinements are imminent, such as the Queensland government's recent announcement that lobbyists will be banned from working as political campaigners during elections. There is no shame, nor admission of entrenched wrong-doing, should Tasmania move to overhaul and make substantial reforms of our lobbying regulatory system in the interests of investing in public trust and confidence in our democratic systems of governance.

Tasmanians recognise that,

> *"The purpose of an integrity system in government is to ensure its agents – ministers, their staff, the public service and boards and staff of other government-owned bodies – work fairly, honestly, openly and accountably in the interests of the public they serve, and not for the benefit of themselves or their interests …. An integrity system needs both to articulate appropriate standards to guide behaviour and decision-making, and to operate an appropriate system of regulation, review and investigation of government agencies and their operations" (Coaldrake 2022;Pg 8).*

Tasmanians deserve a lobbying regulatory system which delivers this and no less.

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