DRAFT FRAMEWORK REPORT

Recommendations for reforming lobbying oversight in Tasmania

INTEGRITY COMMISSION TASMANIA

Contents

1. Introduction

This report presents the Integrity Commission's recommendations for reforming lobbying oversight in Tasmania. The current lobbying oversight system, operating since 2009 and administered by the Commission from 1 July 2022, has not been reviewed or improved in this time. This moment presents an opportunity for significant but common-sense reform that will bring Tasmania in line with lobbying oversight systems nationally, while taking into account the specific context of Tasmania, and minimising administrative burden for those impacted by new regulations.

We have developed these reform recommendations operating from the principles of transparency and accountability, for the purpose of enhancing public trust in government and democratic processes more broadly. The goals of the proposed framework are to guide ethical conduct by public officials, enhance fairness and transparency in government decision-making, and to improve the quality of government decision-making. Overall, a transparent lobbying oversight system avoids secrecy while still allowing some privacy for [*public representatives*][1]

[1] The term 'public representative' is used in square brackets throughout the draft framework report. An alternative term may be considered depending on feedback received.

in discussions with constituents, advisers, staff, the public sector more broadly, and indeed lobbyists.

Lack of transparency and accountability in lobbying activities risks eroding public trust that decisions are being made fairly and in the public interest, and that there may be an imbalance towards decisions being made due to powerful minority interests. It is therefore in the interests of both [*public representatives*] and lobbyists that the public is reassured decisions are being made without improper power or influence.

The use of the term 'powerful minority interests' is deliberate – it is important that any system of lobbying oversight not stifle legitimate political discourse or the ability of individuals and community members to advocate for their interests to [*public representatives*]. Those subject to lobbying oversight should comply with transparency measures knowing that the goal is increased public trust, not regulatory agencies creating 'traps' for non-compliance, or designing a system that is too difficult, costly, or otherwise overly burdensome for voluntary compliance.

The Commission has been guided by the above in developing these lobbying reform recommendations. We considered stakeholder and community views solicited through a four-month public consultation process, which guided our understanding of community expectations around transparency and accountability in lobbying. Recommendations also account for the perspectives of those who would be subject to regulatory measures; both those seeking to influence, and those potentially influenced, by lobbying activities.

We have reviewed national and international standards for transparency and accountability in lobbying, noting that New South Wales, Queensland, South Australia, and now Victoria are tightening transparency requirements around lobbying activities. Tasmania should be expected to follow suit, while acknowledging our specific operating context. Small communities come with costs and opportunities for oversight, and there may be scope for informal mechanisms in Tasmania that would not be feasible in larger states or less connected populations. However, Tasmanian exceptionalism should not prohibit an attempt to align the state with national standards.

Any new system of regulation necessitates a corresponding comprehensive education and training program for those who will need to understand and apply the rules to their own practices. The Commission will develop and continue to support educational activities for [*public representatives*], as well as advisory services for lobbyists and [*public representatives*], to ensure that the oversight system is well understood and both lobbyists and [*public representatives*] are aware of their obligations and empowered to cooperate.

Overall, the current oversight of lobbying in Tasmania could be significantly enhanced, and we provide 14 recommendations for doing so, from administrative adjustments to substantial new measures. The recommendations presented here are interdependent and should be considered as a package of reform.

There are 2 main mechanisms for lobbying oversight: establishing and maintaining a register of lobbyists; and establishing and maintaining a system of disclosure for lobbying activities. The goal of each is increased transparency in who is seeking to influence public decision-making, how, and in which areas. These mechanisms are currently governed in Tasmania by the

'Lobbying Code of Conduct', which is an administrative code and may be more effective if prescribed in a legislative instrument.

Improving Tasmania's system of lobbying oversight, beyond the current register of lobbyists, will therefore involve several main areas for reform. These include:

- Definition and scope reform: lobbying activities, lobbyists, and [public representatives]
- Lobbying register reform
- Disclosure reform
- Reforming practices related to lobbying (gifts, success fees)
- Separation between lobbyists' political and lobbying activities (cooling-off periods, 'dual-hatting', political donations).

Reform will also need to extend to controls, that is, providing the Commission with a process to monitor compliance with the new system, and implementing a clearly defined system of sanctions for non-compliance. Education, training, and advisory services will be required for those affected to understand and comply with their new obligations. Resourcing the Commission's implementation, monitoring, education and ongoing review of the new system will also be essential for it to be effective.

2. Summary of recommendations

2.1 Definition and scope reform

'Lobbying activities'

Recommendation 1 - The Commission recommends the following definition of lobbying activities:

'Communications with [*public representatives*], in which a person or entity seeks to advocate for an interest, prior to a decision regarding: making or amendment of legislation, development or amendment of a government policy or program, awarding of a government contract or grant, and allocation of funding.'

Recommendation 2 - The Commission recommends the following exemptions from the definition of lobbying activities:

- occurring in the normal functioning of government operations, such as communications between colleagues, staff, or other [*public representatives*]
- about personal or family matters
- which are already transparent by nature (for example, public forums), or involving incidental meetings or constituents seeking advice or assistance from their local member
- submissions made in response to public consultation processes.

'Lobbyist'

Recommendation 3 - The Commission recommends that a 'lobbyist' be defined as:

- an individual or organisation undertaking lobbying activities

'Registered Lobbyist'

Recommendation 4 - The Commission recommends that a 'registered lobbyist', i.e. for the purposes of triggering the threshold for inclusion on the Register of Lobbyists, be defined as:

- any person, company or organisation (including its employees) who conducts lobbying activities on behalf of a third-party client
- any person, company or organisation who conducts lobbying activities on behalf of a corporation or organisation, whether as an employee or contractor (i.e., in-house).

Recommendation 5 - The Commission recommends adding the following obligations for lobbyists to the Lobbying Code of Conduct:

- act in good faith and avoid conduct likely to bring discredit upon themselves, [*public representatives*], their employer or client
- correct any inaccurate information and not let a representative rely on inaccurate information
- indicate to their client their obligations under legislation and Lobbying Code of Conduct
- not divulge confidential information
- not represent conflicting or competing interests without the informed consent of those whose interests are involved
- inform [*public representative*] of any conflict of interest
- not place [*public representative*] in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on them, and
- inform [*public representatives*] of the guidance on restricting gifts.

'Public Representative'

Recommendation 6 - The Commission recommends that ['*public representative'*] for the purpose of lobbying regulation be expanded and defined as:

- a Minister, a Parliamentary Secretary, a Member of Parliament of the political party (or parties) that constitute the Executive Government of the day
- a person employed as a Ministerial adviser
- a Member of Parliament in the House of Assembly
- a Member of the Legislative Council
- a Head of Agency appointed under the *State Service Act 2000*
- a direct report of a Head of Agency appointed under the *State Service Act 2000*

- equivalent public officials not in the State Service, such as Chief Executive Officers (CEOs) and members of Boards of State-owned Companies and Government Business Enterprises.

Recommendation 7 - The Commission recommends adopting standards in the Lobbying Code of Conduct that prescribe minimum standards for [*public representatives*] in relation to interacting with lobbyists. These should be more stringent than the general standards in the current Code, and should include:

- no undocumented or secret meetings,
- seeking the views of all parties whose interests are likely to be affected by adopting a lobbying proposal,
- giving no preferential treatment and/or access to particular individuals or groups,
- accounting for informal lobbying representations in reporting requirements,
- not divulging information that would produce unfair advantage, and
- reporting any reasonably suspected breach of the Lobbying Code of Conduct.

2.2 Lobbying register reform

Recommendation 8 - The Commission recommends that entity information required for the register include information currently required:

- business registration details
- names and positions of persons employed, contracted or engaged
- names of clients and client organisations, and
- contact details.

And recommends expanding to include:

- Whether acting as a third-party lobbyist, or in-house lobbyist
- Whether the lobbyist has worked as a [*public representative*] (defined in section 2.1) in the previous 12 months, and to specify the role
- Whether the lobbyist has been paid to professionally advise on an election campaign (i.e., in an election, in order to get someone elected) in the previous 12 months, and
- Whether the lobbyist has made a donation to a [*public representative*] or political party in the last 12 months.

2.3 Disclosure reform

Recommendation 9 - The Commission recommends [*public representatives*] be required to disclose contact that meets the definition of 'lobbying activities' – i.e. lobbying by all lobbyists - on a contact disclosure log within 5 days of the contact, and include the following information:

- [*Public Representative*] name and title
    - If meeting or phone call, other [*public representatives*] present

- Name and organisation/firm of lobbyist (if a 'registered lobbyist')
- Date and time of lobbying activity contact
- The nature of the lobbying activity, i.e., in respect of a government decisions in relation to:
    - Developing or amending legislation
    - Developing or amending policy
    - Awarding a grant or contract
    - Allocation of funding
    - Other
        - If 'other', specify
- Form of contact – meeting, phone call, text message, written submission/proposal
- Whether the person or entity engaged in lobbying activities is on the lobbyist register
- Whether meeting notes are kept and held on record as required for public officials.

2.4 Reforming specific practices related to lobbying

Gift giving between lobbyists and [public representatives]

Recommendation 10 - The Commission recommends that gift giving between lobbyists and [*public representatives*] be banned outright. Prior to accepting any gift or benefit, [*public representatives*] should first check the lobbyist register, and if the provider of the gift is a registered lobbyist, they should not accept the gift. [*Public representatives*] should not give gifts to any registered lobbyist.

Success fees

Recommendation 11 - The Commission recommends banning the acceptance of success fees paid from clients to lobbyists.

2.5 Separation between lobbyists' political and lobbying activities

Cooling-off periods

Recommendation 12 - The Commission recommends that the cooling-off provision remain at the current period of 12 months, but should apply to all [*public representatives*] under an expanded definition.

'Dual hatting'

Recommendation 13 - The Commission recommends restricting [*public representatives*] from being party to lobbying activities by lobbyists who previously advised them on electoral campaigns (i.e., provided political advice in an election period, in order to get them elected). This would not apply to general advice outside an election period, or general communications advice. **This should apply for a period of 12 months after being elected.**

Political donations

Recommendation 14 - The Commission has made recommendations elsewhere regarding limits on political donations, and here recommends more transparency in relation to political donations and lobbying activities. Specifically, **we recommend an additional transparency measure when lobbyists register with the Commission and annually when confirming that their details are up to date: indicating whether they have donated to a *[public representative] or political party* in the previous 12 months.**

3. Background

This report is informed by over 18 months of preparatory work undertaken by the Commission in anticipation of developing recommendations for reforming lobbying oversight. This included:

- scoping and Board approval of a project relating to lobbying in Tasmania, which defined the scope and terms of reference for the current recommendations
- producing a publicly available research report, *Reforming lobbying oversight in Tasmania: Research Report*, which detailed the current system of lobbying regulation in Tasmania, developed key issues in considering lobbying reform, and provided a high-level review of comparable standards and practices in other national and international jurisdictions
- a public consultation paper, which summarised key issues and provided discussion prompts to solicit stakeholder and public opinion
- a four-month consultation process, in which the Commission publicised the call for submissions and directly approached 37 targeted stakeholders for submissions, including academics, lobbyists, peak bodies, and Government. The Commission website contains the published submissions received during the consultation process
- an overview of submissions in which submissions were coded and analysed along key issues posed in the consultation paper, gauging support or objections to specific measures, as well as a discussion of issues raised outside the discussion questions, and
- further engagement with stakeholders, including [public representatives] and jurisdictions in QLD (Crime and Corruption Commission, CCC), and NSW (Independent Crime and Corruption Commission, ICAC).

The discussion and recommendations in this report should be read and understood in conjunction with our research, consultation, and overview papers.

Current lobbying regulation in Tasmania

The current system of lobbying oversight is detailed in the Commission research report. In brief, the system consists of a register of lobbyists, and a Lobbying Code of Conduct which defines 'lobbyist', 'client', 'Government representative', and 'lobbying activities', as well as

requirements for confirming and updating lobbyist details, and the process for removing a lobbyist from the register.

Broadly, the current system:

- mandates a register of lobbyists, including details of company name, lobbyist name, contact details, clients, and business registration details
- a statutory declaration that they have never been sentenced to a term of imprisonment for 24 months or longer, or found guilty of a crime involving dishonesty
- mandates that lobbyists should update their details within 10 days of any change to their currently logged details on the register
- applies a cooling-off period of 12 months for ministers, parliamentary secretaries, and heads of state service agencies after they cease to hold office/employment, and
- outlines behavioural standards for lobbyists and Government representatives, such as not engaging in corrupt, dishonest or illegal conduct or making false, misleading or exaggerated claims.

Policy responsibility for administering and monitoring the register rested with the Department of Premier and Cabinet (DPAC) until July 2022, when responsibility transferred to the Commission.

Currently, the onus of compliance with the Lobbying Code of Conduct largely lies with lobbyists, who must register accurate information on the Register. The duty of public officers is to not be subject to lobbying by unregistered lobbyists who are acting on behalf of third-parties, rather than providing transparency in who they are meeting with and for what purposes. Standards for Government representatives in relation to conduct related to lobbying (though not explicitly) lie under the current Ministerial Code of Conduct and the State Service Code of Conduct.

There are no provisions under the current code for disclosure of information about specific lobbying activity undertaken by lobbyists, including which Government representatives they are meeting with, and in which areas they are seeking influence or change.

4. Areas for reform and current recommendations

4.1 Definitions and scope reform

It is important for lobbyists, [*public representatives*], regulatory authorities, and the public, to understand the difference between lobbying and consultation, and between lobbying and normal political activities. It would be beneficial if the definitions in Tasmania's system were as consistent as possible with other Australian jurisdictions, so lobbyists working across state lines meet the same threshold for being considered a lobbyist in Tasmania or elsewhere.

Different definitions serve different purposes. 'Registered Lobbyist' must be defined for the purpose of maintaining a public register of lobbyists and their clients. *['Public Representative']* must be defined to identify who may be targeted by lobbying efforts, and therefore subject to regulation in their conduct and disclosures relating to engaging with lobbying activity. 'Lobbying activities' must be defined if [*public representatives*] are to record efforts to influence decisions on a contact disclosure log.

'Lobbying activities'

Lobbying activities must be clearly defined so that [*public representatives*] understand that they are being lobbied, and for the purpose of triggering regulatory requirements, such as disclosure of contact falling under the definition of 'lobbying activities'. The definition of 'lobbying activities' should not be so constraining that it prevents a constituent from emailing their local Member of Parliament or talking to them informally, for example in a chance meeting in the supermarket.

The current Tasmanian Lobbying Code of Conduct defines 'lobbying activities' as:

> *Communications with a Government representative in an effort to influence Government decision-making including the making or amendment of legislation, the development or amendment of a Government policy or program, the awarding of Government contract or grant or the allocation of funding.*

It excludes:

- communications with a committee of the Parliament
- communications with a Minister or Parliamentary Secretary in their capacity as a local Member of Parliament in relation to non-ministerial responsibilities
- communications in response to a call for submissions
- petitions or communications of a grassroots campaign nature in an attempt to influence a Government policy or decision
- communications in response to a request for tender
- statements made in a public forum, and
- responses to requests by Government representatives for information.

The Commission's research report into lobbying considers the language of 'influence', and whether this has a negative connotation, or implicitly excludes lobbying for the purpose of maintaining the status quo. IBAC Victoria recently observed[2] that the word 'influence' may define lobbying activities too narrowly, and Canada broadened its definition of lobbying activities from the language of 'influence' to include activities 'in respect of' government decisions.

[2] Special Report on Corruption Risks Associated with Donations and Lobbying: https://www.ibac.vic.gov.au/docs/default-source/special-reports/special-report-on-corruption-risks-associated-with-donations-and-lobbying---october-2022.pdf?sfvrsn=ab32621f_4. P 38

Submissions to our consultation process encouraged the broadest definitions possible, with few or no exemptions. The risk of too broad a definition is that it captures activities within the normal course of a [*public representative's]* work, and given that the goal of defining lobbying activities is to build a new disclosure system, would create an unnecessarily low threshold for disclosure that may discourage compliance, and be a burden on public officials. Based on Australian and international current practice for defining lobbying activities, the Commission therefore recommends the following definition of lobbying activities:

> *Communications with [public representatives], in which a person or entity seeks to advocate for an interest, prior to a decision regarding: making or amendment of legislation, development or amendment of a government policy or program, awarding of a government contract or grant, and allocation of funding.*

We note that entities such as interest groups and peak bodies can undertake 'lobbying activity' despite not being on the Lobbyist Register. They are captured by the Code.

Mirroring practice in Ireland, the Commission recommends the following exemptions from the definition of lobbying activities:

- occurring in the normal functioning of government operations, such as communications between colleagues, staff, or other [*public representatives*]
- about personal, family or household matters
- which are already transparent by nature (for example, public forums), or involving incidental meetings or constituents seeking advice or assistance from their local member, and
- submissions made in response to public consultation processes.

These exemptions are intuitive, in plain language, and allow for communications with government that do not interfere with the need for privacy on behalf of [*public representatives*], nor discourage access to [*public representatives*] by the community.

'Lobbyist'

Qualifying as a 'registered lobbyist' determines who should be required to register publicly, and therefore be bound by the Code of Conduct as it applies to registered lobbyists. It is important to have a publicly available and current list of professional lobbyists and their clients for the purpose of transparency. The lobbyist register also assists [*public representatives*] in determining when they are being lobbied, and provides a category-level threshold for regulating specific practices related to lobbying.

'Lobbyist' may be broadly considered to mean 'an individual or organisation undertaking lobbying activities'. For the purpose of creating a lobbyist register, 'registered lobbyist' is defined as a specific category of those who undertake lobbying activities.

With complementary disclosure mechanisms such as a publicly available contact log populated by [*public representatives*], 'registered lobbyists' are defined as a threshold for inclusion on the

register, and 'lobbying activities' are recorded by [*public representatives*], regardless of whether the person undertaking 'lobbying activities' is a registered lobbyist.

Currently, the Tasmanian Lobbying Code of Conduct defines lobbyists as 'any person, company or organisation who conducts lobbying activities on behalf of a third-party client or whose employees conduct lobbying activities on behalf of a third-party client.' Other jurisdictions in Australia are moving towards including in-house lobbyists (i.e., a person who is employed by a company to lobby for their interests), and the majority of responses to the Commission's consultation process also supported this change.

The Commission recommends that a 'registered lobbyist', for the purposes of triggering the threshold for inclusion on the Register of Lobbyists, be defined as:

- any person, company or organisation (including its employees) who conducts lobbying activities on behalf of a third-party client, and/or
- any person, company or organisation who conducts lobbying activities on behalf of a corporation or organisation, whether as an employee or contractor (i.e., in house).

The implication of this expanded definition is that those currently working as in-house lobbyists will need to register their details on the Commission-administered Lobbyist Register, in line with the proposed entity information reform detailed in Recommendation 3. Lobbyists currently on the Register will not be affected by this change.

As noted in our research report, the Queensland code of conduct for lobbyists[3] imposes broader standards of behaviour for lobbyists than the current Tasmanian code. We recommend adding the following obligations in the code of conduct for lobbyists:

- act in good faith and avoid conduct likely to bring discredit upon themselves, [*public representatives*], their employer or client
- correct any inaccurate information and not let a [*public representative*] rely on inaccurate information
- indicate to their client their obligations under legislation and Lobbyists Code of Conduct
- not divulge confidential information
- not represent conflicting or competing interests without the informed consent of those whose interests are involved
- inform [*public representative]* of any conflict of interest
- not place [*public representatives*] in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on them, and
- inform [*public representatives*] of the guidance on restricting gifts.

[3]https://www.integrity.qld.gov.au/assets/document/catalogue/general/lobbyists_code_of_conduct_Sept_2013.pdf

['Public Representative']

Under the current Lobbying Code of Conduct, a 'Government representative' means 'a Minister, a Parliamentary Secretary, a Member of Parliament of the political party (or parties) that constitute the Executive Government of the day, a person employed as a Ministerial adviser, or a Head of Agency appointed under the *State Service Act 2000*.'

The Commission has considered whether this definition is sufficient for the purposes of regulating current lobbying activities in Tasmania. Our consultation process provided evidence that all Members of Parliament (MPs) and their senior staff are currently subject to lobbying activities, which suggests that the activity is deemed a worthwhile investment by lobbyists themselves. Including Independent and Opposition MPs would bring Tasmania's definition in line with Queensland, New South Wales, and Victoria, where the definition of representative for the purpose of lobbying regulation is guided in principle as 'those who may be subject to lobbying activities'.

Submissions to our consultation process supported expanding this definition to include Opposition and Independent MPs and their senior staff, which the Commission has included in its recommendations. Some submissions supported the definition being expanded to all public officers (as defined under the *IC Act*[4]), including employees of state service agencies and entities. The Commission's view is that this would impose an unnecessary degree of administrative burden for those captured under the definition, as well as hinder the Commission's ability to monitor for undue influence on decision making.

We note suggestions to include local government under the definition for the purposes of lobbying oversight, particularly in the context of development and planning decisions. As noted in our submission overview report, the Commission has limited investigation of possible reform in the current project to State Government. Local government was not included in the original Terms of Reference for this project. Any consideration of extending the lobbying oversight regime to local government would require consultation with the local government sector.

Future reform may seek to include disclosures for local government, however this would likely require its own system that considered and incorporated the practical reality of capacity and resourcing for local government in Tasmania. Currently it would be an undue burden for councillors, who operate under minimal resourcing already, to comply with the same regulatory requirements as Members of Parliament.

Therefore, the Commission recommends that ['*public representative]*' for the purpose of lobbying regulation be defined as:

- a Minister, a Parliamentary Secretary, a Member of Parliament of the political party (or parties) that constitute the Executive Government of the day

[4] www.legislation.tas.gov.au

- a person employed as a Ministerial adviser
- a Member of Parliament in the House of Assembly
- a Member of the Legislative Council
- a Head of Agency appointed under the *State Service Act 2000*
- a direct report of a Head of Agency appointed under the *State Service Act 2000,* and
- equivalent public officials not in the State Service, such as Chief Executive Officers and members of Boards of State-owned Companies and Government Business Enterprises.

The implications of expanding the definition of [*public representative*] are that a greater number of public officials will be subject to the Lobbying Code of Conduct and associated regulations, including compliance with any new disclosure requirements regarding contact with lobbyists.

The Commission also recommends adopting standards in the Lobbying Code of Conduct that prescribe minimum standards for [*public representatives*] in relation to interacting with lobbyists. These should be more stringent than the general standards in the current code, and should include:

- no undocumented or secret meetings,
- seek the views of all parties whose interests are likely to be affected by adopting a lobbying proposal,
- no preferential treatment and access for particular individuals or groups,
- account for informal lobbying representations in reporting requirements,
- do not divulge information that would produce unfair advantage, and
- report any reasonably suspected breach of the Lobbyist Code of Conduct.

4.2 Lobbying register reform

As defined in Section 4.1, a 'registered lobbyist', for the purposes of triggering the threshold for inclusion on the Lobbyist Register, is:

- any person, company or organisation (including its employees) who conducts lobbying activities on behalf of a third-party client
- any person, company or organisation who conducts lobbying activities on behalf of a corporation or organisation, whether as an employee or contractor (i.e. in house).

There is evidence that the current information lobbyists must provide when they register as a lobbyist could be expanded to provide more meaningful information for public scrutiny. The current lobbyist register contains basic information about the lobbyist, including business

registration details; names and positions of persons employed, contracted or engaged; names of clients; and contact details. Information about the lobbyist's contact details such as address, telephone number, email or web address is collected but not currently displayed publicly.

Based on submissions to the consultation process, the Commission considered expansive additional entity information required for disclosure on the register of lobbyists, including ownership details, spending reports, detailed employment histories, and main area of lobbying activity. Adding information that is already publicly available, such as company ownership, was dismissed as unnecessary. In expanding entity information we considered the purpose of the lobbying reform, and weighed further information against the public good it may provide.

The complementary contact disclosure log populated by [*public representatives*] (recommended in Section 4.3), is also a significant step towards transparency that negates much of the need to expand entity information on the lobbyist register. This shifts the focus of transparency from 'lobbyists' as a category, towards 'lobbying activities'.

The Commission recommends that entity information required for the register include the following information that is currently required:

- business registration details,
- names and positions of persons employed, contracted or engaged,
- names of clients and client organisations
- contact details.

Only entity information that will advance the purpose of the framework presented in this report has been considered in recommending expanded entity information. Section 4.5 details key issues related to the separation of political and lobbying activities, including restriction of movement between government and lobbying firms, and restricting overlap between providing professional political advice and lobbying. To assist the Commission in monitoring the regulation of these activities, we recommend expanding information on the register to include:

- Whether acting as a third-party lobbyist, or in-house lobbyist
- Whether the lobbyist has worked as a [*public representative]* (defined in section 4.1) in the previous 12 months, and to specify the area of portfolio responsibility
- Whether the lobbyist has been paid to professionally advise on an election campaign (i.e., in an election, in order to get someone elected) in the previous 12 months
- Whether the lobbyist has made a donation to a [*public representative*] or political party in the last 12 months.

Persons responsible for registering their details on the Lobbyist Register administered by the Commission will also now include all those under the definition of 'registered lobbyist' in Section 4.1.

4.3 Disclosure reform

Currently the Tasmanian public knows which companies and individuals are engaged in third-party lobbying, if they choose to register themselves. Government representatives are not required to publish any records of contacts with lobbyists. This means that the Tasmanian public is unaware of the frequency, type, or topic of lobbying activities.

If Ministerial diaries are available and they do not show this information, this places Tasmania's lobbying transparency behind that of New South Wales, Queensland, soon to be Victoria, and internationally, Scotland, Ireland, and Canada. Implementing requirements for record keeping for contact between lobbyists and [*public representatives*] would be a significant piece of reform recommended by the Commission, and a leap forward for transparency in the current system.

Keeping and publishing Ministerial diaries was supported by submissions, and is regular practice in other jurisdictions. The Commission supports publishing Ministerial diaries as a matter of good practice for government transparency. However, for the purposes of lobbying oversight, under an expanded definition of '[*public representative*]', publishing Ministerial diaries would not capture all [*public representatives*] subject to lobbying. Additionally, diaries contain information about all meetings by Ministers, and do not specifically indicate whether the purpose of the meeting was 'lobbying activity'.

Our review of Ministerial diaries in other jurisdictions found that they were decentralised, appearing on multiple government websites, often out of date, and in .pdf format, making them difficult to search. Although the Tasmanian Government Information Gateway contains basic Right to Information (RTI) disclosed information - thus providing some transparency - the portal can be difficult to parse for disclosures of any lobbying activities.

Therefore, an alternative mechanism of disclosure for contact with [*public representatives*] for the purpose of lobbying will be more appropriate to implement in Tasmania. Other jurisdictions incorporate contact disclosure logs for lobbyists alongside the lobbyist register. In these systems, lobbyists both register their entity details and keep logs of every contact with [*public representatives*], which are published under their entity information in the public register.

Submissions to our consultation process were supportive of contact logs kept by either/or lobbyists and [*public representatives*]. Some jurisdictions require that both lobbyists and [*public representatives*] keep a record of the same contact, which can then be cross-checked (e.g., Queensland).

In Tasmania, however, with lobbying oversight being the responsibility of the Commission, and the Commission's jurisdiction to investigate misconduct being restricted to public officials, we recommend that contact disclosure logs be kept, maintained, and published by [*public representatives*] (as defined in Section 4.1).

We developed this recommendation in line with the following principles:

- the administrative burden of disclosure should rest with the [*public representatives*] being lobbied
- the administrative burden should be proportionate to the aims of the regulatory framework, i.e., encouraging ethical conduct, transparency in dealings of public officials
- the threshold for triggering a contact log should be: a) contact by any lobbyist, including registered lobbyists; or b) contact that meets the definition of 'lobbying activity' set out in Section 4.1
- the contact log should be user-friendly, designed for use by busy [*public representatives*]
- the contact log should be public, and appear on an easily accessible and searchable database
- the contact log should be balanced with the understandable need for privacy of [*public representatives*] as well as lobbyists, and
- a minimum standard of information should apply to each record of contact, such that the information provided is useful for the purposes of transparency and trust.

In line with these principles, the Commission recommends [*public representatives*] be required to disclose contact that meets the definition of 'lobbying activities' on a contact disclosure log within 5 days of the contact, and include the following information:

- [*Public Representative*] name and title
    - If meeting or phone call, other [*public representatives*] present
- Name and organisation/firm of lobbyist (if a 'registered lobbyist')
- Date and time of lobbying activity contact
- The nature of the lobbying activity, i.e., in respect of a government decision in relation to:
    - Developing or amending legislation
    - Developing or amending policy
    - Awarding a grant or contract
    - Allocation of funding
    - Other
        - If other, brief description
- Form of contact – meeting, phone call, text message, written submission/proposal
- Whether the person or entity engaged in lobbying activities is on the lobbyist register
- Whether meeting notes are kept and held on record as required for public officials.

The Commission should maintain the electronic database on which [*public representatives*] log lobbying activities. In other jurisdictions, governments publish contact with lobbyists on their own websites, but since this system is intended to be complementary to the Tasmanian Register of Lobbyists, the Commission should build and maintain an easy-to-use automatic form submission process for basic information about lobbying activities. This process is contingent on sufficient resourcing being allocated to the Commission for implementation and ongoing maintenance and administration.

In order to minimise the administrative burden for [*public representatives*] we propose a simple text box and drop-down system for the contact disclosure log:

- Name and organisation/firm of lobbyist (*text box / autofill if previously entered*)
- Date and time of lobbying activity contact (*calendar*)
- The nature of the lobbying activity (*drop down box* / *text box for other*)
- Form of contact – meeting, phone call, text message, written submission/proposal (*drop down box*)
- Whether the person or entity engaged in lobbying activities is on the lobbyist register *(tick box y/n)*
- Whether meeting notes were kept on record (*tick box y/n* – note meeting records are a current requirement).

Implementing this recommendation in conjunction with the register of lobbyists would bring Tasmania's transparency in line with all 3 of the OECD's core disclosures for lobbying activities: enabling identification of the interests represented; the objective of the lobbying activity; and the government institutions ([*public representatives*]) being lobbied[5]. It would also bring Tasmania closer to international standards in Scotland and Ireland, without the additional disclosure measures in these jurisdictions that require lobbyists to provide detailed information about the intended outcomes of the lobbying activity, or representatives to publish diaries.

Compliance by [*public representatives*] with a new contact disclosure log should be a duty of employment and reflected in relevant codes and policies, alongside a new lobbying code of conduct and enforcement regulations.

4.4 Reforming specific practices related to lobbying

Gifts giving between lobbyists and [public representatives]

Gifts and benefits for all public service employees, and elected representatives in particular, are governed in Tasmania by existing policies and codes. Most provide specific thresholds at which public service employees must declare a gift, or thresholds at which they must decline a gift.

[5] www.oecd.org/corruption/ehtics/Lobbying-Brochure.pdf

Although the extent of gift giving between lobbyists and [*public representatives*] in Tasmania is unclear, practices of gift giving from lobbyists to [*public representatives*] present a particular high-risk area for creating conflicts of interest and the perception of indebtedness. Submissions to our consultation process were also overwhelmingly in support of implementing a ban, rather than implementing thresholds for disclosure or acceptance of gifts, or relying on existing requirements.

Therefore the Commission recommends that gift giving between lobbyists and [*public representatives*] be banned outright. [P*ublic representatives*] should consult the lobbyist register, and if the provider of the gift is a lobbyist, they should not accept the gift. [*Public representatives*] should not give gifts to any lobbyist.

Success fees

Success fees are the commission, payment, or reward from a client to a lobbyist, dependent on the outcome of the lobbying activity. Favourable outcomes may produce additional reward, pecuniary or otherwise, for lobbyists. This contingency on outcome creates further incentive for lobbyists to achieve a particular outcome in their lobbying activities, i.e., to push harder for a result.

Tasmania is the only state in Australia to not prohibit either paying or receiving success fees. It is unclear to what extent the practice occurs in the state, but there is no evidence the practice currently exists. Regardless, to maintain consistency with national standards, we recommend banning the acceptance of success fees paid from clients to lobbyists.

4.5 Separation between lobbyists' political and lobbying activities

Cooling-off periods

As noted in our research paper, former government officials comprise a large share of third-party lobbyists due to the incentive for lobbying firms to increase their access to government by hiring former officials. The issue with the 'revolving door' is that senior [*public representatives*] have networks and knowledge that could grant the private companies they lobby an influence advantage. Cooling-off periods are intended to dilute [*public representatives*]' access to relevant privileged information.

Currently, the cooling-off period in Tasmania prohibits ministers, parliamentary secretaries, and heads of agencies from engaging in lobbying activities relating to any matter that they had official dealings with in the last 12 months in office. This specific restriction allows former [*public representatives*] to register and work as lobbyists, just not on matters relating to their portfolio.

Although submissions recommended extending the cooling-off period (on average between 18 and 24 months), the Commission recommends that the cooling-off provision remain at the current period of 12 months, but should apply to all [*public representatives*] under the expanded definition.

This recommendation takes into account the specific context of Tasmania, where employment for former officials is more difficult than federally and in other state jurisdictions. However, we recommend that former ministers, parliamentary secretaries, and heads of agencies automatically register as lobbyists if they are engaged in any lobbying activities, and indicate on the register that they are former public officials, along with the area of their former portfolio, or areas of responsibility. Former [*public representatives*] should not lobby on matters relating to their former portfolio for the designated period. Additionally, as recommended in Section 3, current [*public representatives*] should log all contact falling under the definition of 'lobbying activities', including by those of former public officials.

This recommendation satisfies the public's right to transparency over lobbying activities by individuals with higher levels of access to their former colleagues and privileged portfolio information. At the same time, it does not unfairly restrict the right of former public officials to pursue private employment in a market with considerably fewer options than other Australian states.

The expanded lobbyist register information, and contact disclosure logs, will also grant the Commission previously unknown insight into the type and extent of lobbying by former public officials. We complement this recommendation with additional restrictions on 'dual hatting'. This suite of reforms creates necessary separation in the relationship between [*public representatives*] and lobbyists.

'Dual hatting'

'Dual hatting' describes a practice in which an individual or firm provides political or electoral advisory services to a potential elected representative, then lobbies that same elected representative once in office, often on issues which they previously provided advice. In a closer and more problematic practice, lobbyists may simultaneously provide political advice and lobbying the individuals to which they are providing advice.

Dual hatting, along with the revolving door between government and the lobbying industry described earlier in Section 4.5, represents a clear threat to the public's expectation of a separation of interests between [*public representatives*] and lobbyists. At worst, dual hatting can encourage misconduct when it creates an indebtedness in [*public representatives*] that could improperly influence decision making.

In Queensland during 2022, three lobbyists were banned outright from contacting Cabinet following a highly critical analysis of common dual hatting practices in the Coaldrake report[6], and the Queensland Premier called for uniform national lobbying laws, including restrictions on dual hatting practices by lobbyists. The Coaldrake report specifically recommend that if an individual lobbyist has played a substantial role in the election campaign of a government, they should be banned from lobbying for the next term of office. The Canadian Lobbyists' Code of Conduct[7] places restrictions on the ability of a lobbyist who participates in 'political activities' that may 'reasonably be seen to create a sense of obligation', in the form of being banned from lobbying that person for a specific period of time.

[6] www.coaldrakereview.qld.gov.au
[7] www.lobbycanada.gc.au/en/rules/the-lobbyists-code-of-conduct

Largely restrictions on dual hatting focus on regulating lobbyists, but given the Commission's jurisdiction in relation to the conduct of public officers, any regulation of this activity would be better focussed on the obligations of [*public representatives*] to not accept lobbying from those who have advised their political campaigns.

Therefore, the Commission recommends restricting [*public representatives*] from being party to lobbying activities by lobbyists who previously advised them on electoral campaigns (i.e., provided political advice in an election period, in order to assist to get them elected). This would not apply to general advice outside an election period, or general communications advice. This should apply for a period of 12 months after being elected.

This recommendation would not apply to all [*public representatives*] under the expanded definition, but only to elected representatives (i.e., Members of Parliament), as these are the only [*public representatives*] who would need to seek political advice in order to get elected. This restriction would only apply to individual [*public representatives*], i.e., not to lobbyists advising a political party in general.

Political donations

Along with involvement in advising political campaigns, lobbyists financing campaigns can create a conflict of interest when the lobbyist can then influence the politician if elected. Political donations from lobbyists to [*public representatives*], along with 'dual hatting', can encourage indebtedness from a [*public representative*] to a lobbyist, and diminish public trust that decisions are being made in the public interest, as opposed to individual financial interests of [*public representatives*] who will need political donations in the next electoral cycle.

The Commission does not have carriage of political donations, though has made submissions in consultation processes by the Tasmanian Electoral Commission that the threshold for declarations of donations be $1000[8] regarding limits on political donations. Further limitations on the ability of lobbyists to donate to the [*public representatives*] they lobby should be considered in broader political donation reform.

Here we recommend more transparency in relation to political donations and lobbying activities. Specifically, we recommend an additional transparency measure when lobbyists register with the Commission and annually when confirming that their details are up to date, i.e. indicating whether they have donated to a [*public representative*] or political party in the previous 12 months.

Paid access

The Commission considered whether 'paid access' (i.e. via attendance at dinners and functions, including party political fund-raising events) should be captured within the definition of 'lobbying activity'. We determined that such activity should not be captured, as it does not necessarily amount to lobbying as such, and should be addressed as an electoral donation issue.

[8] https://www.justice.tas.gov.au/__data/assets/pdf_file/0005/663062/Electoral-_-Amendments-Bill-2021_Submission-from-Integrity-Commission_23-September-2021-for-web.pdf

4.6 Reforming compliance monitoring, and sanctions for non-compliance

The success of the reforms outlined in this report will depend on adequate monitoring and enforcement of the new lobbying regulation. The Commission's functions relating to lobbying as prescribed under the *IC Act* include:

- *Section 8(1)(e): Establish and maintain codes of conduct and registration systems to regulate contact between persons conducting lobbying activities and certain public officers.*
- *Section 30(a): The Chief Executive Officer is to monitor the operation of ... any other register relating to the conduct of Members of Parliament.*
- *Section 30(c): The Chief Executive Officer is to review, develop and monitor the operation of any codes of conduct and guidelines that apply to Members of Parliament.*

These are the only legislative provisions in Tasmania for the lobbying regime. Currently, sanctions for lobbyists who do not comply with the code of conduct (either in relation to timely and accurate details provided to the Commission, or by not abiding by the behavioural standards in the code of conduct) can be deregistered by the Commission after being notified they will be removed and given an opportunity to respond.

For [*public representatives*], there are no consequences for not abiding by the code specifically, though internal policies and legislation, such as the Ministerial Code of Conduct or the *State Service Act 2000*, provide some room for sanctions for practices related to lobbying (for example, failure to disclose a conflict of interest, or misuse of power and authority).

Unlike other jurisdictions, the Commission will have responsibility for both administering and monitoring the lobbyist register and proposed contact disclosure register. Currently the *IC Act* allows the Commission to establish and monitor a register of lobbyists, but does not specifically provide powers to administer sanctions.

The Commission can currently maintain the register of lobbyists, determine a lobbyist's eligibility, and deregister a lobbyist. The compliance function of the Commission would allow it to audit the register of lobbyists and the proposed contact disclosure log. The *IC Act* does not need an amendment to audit publicly kept records relating to lobbying (c.f., the parliamentary disclosure of interest register)[9]. The Commission can continue to deregister lobbyists for non-compliance with the Lobbying Code of Conduct.

The Commission's jurisdiction, though, is public officers. The Commission's existing process for triaging, assessing, and investigating misconduct by public officers can also be extended to include misconduct relating to compliance with the new lobbying system. This would mean, for example that non-disclosure of meetings with a lobbyist to influence a particular policy or funding decision could be a failure to declare or manage a conflict of interest. An expanded

[9] The IC Act does not currently contain a power to investigate lobbyists.

lobbyist register, and lobbying disclosure logs, will provide the Commission with more information to make an assessment.

We also acknowledge that while it is important to have penalties for noncompliance, it is more advantageous to have lobbyists and [*public representatives*] comply with the legislation voluntarily, through advocacy and education, rather than penalties.

The Commission considered whether and how sanctions and enforcement actions could be given effect. Taking into account the preference for a co-operative approach as set out immediately above, we have not made any recommendations at this stage but may do so in the future.

4.1 Resourcing a reformed lobbying oversight system

The Commission must have the resources to appropriately implement, monitor, audit, and review the Register and disclosure logs. This will involve additional resourcing for administrative staff for tasks such as communicating with lobbyists, processing statutory declarations, and maintaining the back-end of the online register and contact log.

Additional compliance officers will be needed to perform audits of the register and cross check with the disclosure contact logs. Investigating misconduct relating to undisclosed lobbying of [*public representatives*], by lobbyists would require specific investigative resources for a function not previously held by the Commission.

The new system will also require significant education and training of [*public representatives*], given the goal is voluntary compliance for the purpose of transparency and public trust. It is not in the Commission's interests to establish a new system without the goal of voluntary compliance, and effective communication and education with the public sector, lobbyists, and the public, will be more effective than catching noncompliance based on misunderstanding the new system.

5. Conclusion

This report is the final part of a series on lobbying oversight reform in Tasmania prepared by the Commission. We have drawn together original research, national and international good practice, and the overview of our public consultation process, to recommend a framework for lobbying reform that is achievable, not overly burdensome, and meets the expectations of the community.

The framework has been guided by the principles of transparency, accountability, and the enhancement of public trust in government. Recommendations have been developed for the purposes of preventing misconduct, and improving the fairness and quality of government decision making.

We have considered and recommended expanding the definition of lobbying activities, lobbyists, and [*public representatives*]. We have proposed changes to the lobbyist register, including parties required to register, and information most pertinent to the purpose of a

lobbying reform system: understanding and separating political activities from lobbying activities. We recommend and detail an entirely new transparency measure, i.e., disclosure of contact by lobbyists, maintained by the Commission and populated by [*public representatives*], which would complement the information provided on the register of lobbyists and bring Tasmania in line with good practice in other jurisdictions in Australia.

We recommend common-sense bans on practices that undermine public faith in the system, such as gift giving between lobbyists and [*public representatives*], and success fees paid by clients to lobbyists for achieving particular favourable outcomes. Finally, we take the first steps towards separating lobbyists' political and lobbying activities, through further transparency measures and restrictions on cooling-off periods, 'dual hatting' and political donations.

The recommendations presented here will require further consideration and consultation to achieve buy-in from those affected by new regulations. The Code of conduct will need to be revised to reflect the accepted recommendations. Consultation and approval will need to be sought from the Joint Standing Committee, the Government, and to the extent that legislative changes are necessary, Parliament.

As noted in the introduction to this report, it is in the interests of [*public representatives*] and lobbyists alike that the public is reassured decisions are being made without secret or improper influence. Implementing the recommendations in this report would be a significant transparency measure and enhance confidence in government decision making in the interests of the public.

Following introduction of the new lobbying oversight regime, its operation will be reviewed in 2 years' time. The review will examine whether the new oversight regime is achieving its objectives of guiding ethical conduct by public officials, enhancing fairness and transparency in government decision-making, and improving the quality of government decision-making.