Response to the Integrity Commission Tasmania - *Draft Framework Report: Recommendations for reforming lobbying oversight in Tasmania*

Meg Webb MLC

13 February 2023

1. Introductory Comments

I welcome this opportunity to provide feedback on the *Draft Framework Report: Recommendations for reforming lobbying oversight in Tasmania*, provided by the Integrity Commission (ICT) in December 2022.[1]

Critically, the purpose of this current round of feedback on the provided draft proposals is to evaluate the extent to which those recommendations may strengthen the current lobbying regulation system in a practical and workable manner.

Put bluntly, have the goal posts been shifted far enough? The question isn't only whether these proposals will change and improve the current regulatory system, but whether they will improve it **enough** to result in a robust best-practice, effective, and transparent system in which Tasmanians can feel confident?

Where will these proposed reforms place Tasmania's lobbying regulation system on the "soft" to "hard" spectrum? Will we remain reliant upon the current largely "soft" voluntary-based more passive administrative approach, or will we shift to a "harder" more proactive and legislative-backed approach, or somewhere between the two?

Although a clearer picture of a potentially strengthened and workable lobbyist regulatory system purpose-built for Tasmania emerges from the *Draft Framework Report*, further questions remain, and further reforms needed.

This additional feedback will seek to evaluate this emerging picture against best-practice robust lobbying regulation criteria, as established by independent authorities such as the Organisation for Economic Co-operation and Development (OECD) and the Centre for Public Integrity.

As an elected representative to the Tasmanian Parliament, I have first-hand experience of trying to refer to the current state Lobbyist Register to seek clarity in the public interest over any, and if so to what extent, lobbying may have occurred in relation to public policy debates, and what role such lobbying may have had on those public policy outcomes. Suffice to say, the current lobbyist regulatory system did not assist in answering those questions, and would rate poorly against established transparency goals and principles.

Hence, this practical-use lens from the perspective of someone who may be lobbied, as well as wanting to interact with the regulatory system to further the public interest test of effective transparency and accountability in a timely manner, will also be applied to the *Draft Framework Report's* recommendations.

1.1. ICT lobbying oversight reform consultation process

Before commencing the analysis of the Draft Feedback Report below, I first wish to comment upon, and commend, the consultation process undertaken by the ICT when developing this lobbying oversight reform project. As detailed in the *Draft Framework Report*, the process thus far has involved the production of a comprehensive and informative research report, a structured public consultation paper, a four-month public consultation process with resulting submissions published, followed by an Interim Report summarising those

[1] Hereon-in cited as the *Draft Framework Report 2022*.

submissions received, and the subsequent *Draft Framework Report* which built upon that research and consultation process.[2]

So far, this approach is delivering a good example of a transparent process detailing how and why the proposed new regulatory system is being developed and the policy decisions being made during that process. Particularly the October 2022 *Interim Report* summarising submissions received, which, when read with the *Draft Framework Report* both provide an informative insight into how input received has been used to inform specific decisions being made around questions of structural reform under consideration. Should the reader agree or not with the ICT's decision whether to include or not particular input, the reader can at least see the range of information available for the ICT's consideration and evaluate whether and how that may have informed – or 'influenced' the resulting decision on what to take forward as a public policy recommendation.

In broad-brush terms, this disclosed sequence of who had input, when and in what forum, focus of input, and what impact if any of that input on decision-making, mirrors the desired lobbyist regulatory system goals and outcomes identified above.

It would be consistent with this commendable process therefore, to publish in the ICT's next report those to whom the draft framework was provided for feedback (noting standard consideration of any necessary anonymity considerations), who did provide additional feedback and how that may or may not have been considered by the ICT when formulating its subsequent lobbyist regulation review report and recommendations.

1.2. Terminology

The *Draft Framework Report* uses the terminology of 'public representative' as an interim measure to be finalised upon consideration of feedback received.[3]

In the absence of any viable alternative, the term 'public representative' is a workable and understandable identifier for potential recipients of lobbying efforts. It captures the fundamental aspect that such individuals have either been elected to represent the public, or have been employed to work on behalf of the public, and while doing so to fulfil public-interest principles.

2. Best Practice – What Would it Look Like?

The *Draft Framework Report* encourages consideration of its suite of interdependent recommendations as a "package of reform".[4] Therefore, it is a logical first step to ask what model are we starting from compared with the model the proposed recommendations may deliver?

Further, is the proposed model, or framework, best practice? Viable criteria against which to evaluate the reform proposals are also required.

At the outset, 'best practice' should not be confused with 'gold-plated' in the sense the latter is sometimes interpreted as luxurious beyond that which is necessary to be serviceable and practical.

A best-practice lobbying regulation system is not a luxury for a few jurisdictions which can afford it, but should be a fundamental element of our democratic governance machinery. Noting the *Draft Framework Report*'s emphasis upon the need for reforms to be appropriate within Tasmania's specific context and to not increase the administrative burden beyond that which is workable, it should still be feasible to deliver a "common-sense" and best-practice lobbying regulation model.[5]

[2] *Draft Framework Report 2022*; pg 5.
[3] See Introduction footnote, *Draft Framework Report 2022*; pg 1.
[4] *Draft Framework Report*, 2022; pg 2.
[5] Ibid; pg 1.

Current Tasmanian Model

The following defines a lobbying environment in a broad sense:

> *"A lobbying environment is essentially defined by its actors, their activities, and in formal institutions; it is tightly connected with political decision-making. A lobbying environment might be shaped by the legal regulations of its actors and their actions and its rules for decision-making processes. To achieve a transparent lobbying environment, it is necessary to establish strong rules that fulfil transparency and efficiency requirements for all subjects in an industry and to conceptualise lobbying transparency in the broader scope of decision-making."* [6]

There exist a range of different models seeking to deliver their version of a "transparent lobbying environment."

When assessing how well those different models transparent lobbying regulatory systems, it is useful to note those regulatory models range *"…from no regulation, through "soft" regulation (voluntary systems, self-regulation) to "hard" legislative rules."* [7]

As detailed in the May 2022 *Research Report*, Tasmania's current lobbying regulation system, now administered by the Integrity Commission since July 2022, is based on an administrative "soft" model, rather than the "hard" prescribed in legislation alternative.[8]

This raises the key question as to whether a primarily soft administrative approach can deliver a robust and best practice lobbying regulation system?

How to evaluate effectiveness of lobbying regulation systems?

The benchmark for assessing lobbying regulation frameworks is widely accepted as being the OECD's *Principles for Transparency in Lobbying.*

These Principles seek to provide:

> "*The building blocks [which] address a series of interrelated issues that might logically guide the development of a comprehensive legislative or regulatory framework for enhancing transparency and accountability in lobbying, including:*
>
> - *Developing standards and rules that adequately address public concerns, conform to the socio-political and administrative context, and are also consistent with the wider regulatory framework.*
> - *Ensuring that the framework's scope properly reflects public concerns and suitably defines the actors and activities covered in order to establish enforceable standards and rules.*
> - *Establishing standards and procedures for disclosing information on key aspects of lobbying such as its intent, beneficiaries and targets.*
> - *Setting enforceable standards of conduct for fostering a culture of integrity in lobbying.*
> - *Enhancing the efficacy of legislation or regulation by putting in place a coherent spectrum of strategies and practices for supporting implementation and securing compliance."*[9]

These can be distilled into the following five key elements which lobbying regulations need to demonstrate have been applied in a coherent and comprehensive manner, for that regulatory system to be considered robust:

1. Defining lobbying

[6] Laboutková and Vymětal, 2022, pg 6.
[7] Laboutková and Vymětal, 2017; pg1.
[8] *Research Report*, May 2022; pg 9.
[9] OECD, *Lobbyists, Governments and Public Trust, Volume 1,* 2009; pg 17.

2. Disclosure requirements
3. Reporting Processes and technology
4. Timeliness and ethics (ie updating of information)
5. Enforcement and compliance.[10]

The May 2022 *Research Report* discusses the widely-recognised Centre of Public Affairs systematic evaluation tool, known as the CPI Index, which scores out of 100 the effectiveness and robustness of lobbying regulations around the world. Experts in the field contend that due to its incorporation of, "*all five OECD's key elements of the robustness of lobbying laws, the CPI index appears as the most valid (in terms of content) as the highest number of items falls in conceptual dimensions identified by the OECD*."[11]

The higher the score provided by the CPI Index to a piece of lobbying legislation, the more robust it is, with robustness defined as, "*the level of transparency and accountability that the lobbying regulation can guarantee*."[12]

The *Research Report* informs us that the Australian Register of Lobbyists scored "*one of the lowest scores attained by any lobbying regime*", that being 33 out of 100 points.[13]

Although publications applying the CPI Index appear to focus on evaluating national regimes rather than subnational (excluding some US publications which have used the CPI Index to evaluate all American states' lobbying systems), given the similar administrative models utilised by both the Australian government and Tasmania, it is a fair assumption that the current Tasmanian system would also not score highly on the CPI robustness evaluation index, nor against the OECD Principles of Transparency upon which the Index is based, a verdict indicated in the May 2022 *Research Report*.[14]

It is also useful to keep in mind the criticism – also detailed in the *Research Report* - that Australia's, *"regulatory systems:*

- *only include lobbyists who act for third-party clients in their registration systems, therefore excluding lobbyists working as employees for corporations or other in-house lobbyists*
- *exclude non-profit entities constituted to represent the interests of their members*
- *do not provide for adequate disclosure of the subject matter, purpose, timing, and parties involved in lobbying communications, and*
- *have non-existent or weak enforcement mechanisms."*[15]

Not all information is equal

It is worth noting the above identified criticism that nationally our current regulatory systems have been criticised for inadequate: "*disclosure of the subject matter, purpose, timing, and parties involved in lobbying communications."*

A fundamental criterion underpinning a best-practice lobbying regulation system is the consistent public disclosure of meaningful and ***accessible information***.

[10] Chari et al, 2019 ; pg 233.
[11] Ibid; pg 233.
[12] Bitonti and Hogan, in P. Harris et al. (eds.), *The Palgrave Encyclopedia of Interest Groups, Lobbying and Public Affairs*, 2021; pg 5.
[13] Research Report May 2022; pg 11.
[14] Ibid; pg 11.
[15] Ibid; pg 11.

From the perspective of the broader public it is not just about knowing who is lobbying, who is being lobbied, when and how often – but **what role** that activity may be playing in the decision-making processes of public representatives, particularly elected representatives.

Community members don't want to know merely that a lobbyist met with public representatives once or multiple times; they require the means by which to evaluate whether those meetings involved discussions on public policy issues which may have a bearing on them, their families, and any social, economic and environmental matters they care about or in which they are involved.

Hence, a pivotal question is whether, and how, strict rules improve transparency? Providing the community the capacity to evaluate in a timely manner the potential influence on decision-makers when determining public policy and spending of public monies is key to delivering a meaningful and robust regulatory system.

Lobbyists may not be responsible for the "quality" or otherwise of elected decision-makers, however the community have a right to being able to assess whether lobbyists are influencing or undermining the degree to which resulting decisions remain aligned with the public interest:

> *"There is a significant difference between making information available or truly accessible to the public; only accessibility can cause real, significant and fundamental changes in public administration to strengthen the political accountability, legitimacy and efficiency of governance… while encompassing corruption control and bureaucratic quality …"*[16]

In this context "accessible information" is that which provides a meaningful comprehension of what that lobbying contact was about, and a further understanding of whether it may have the capacity to influence the decision-making process regarding public policy. It facilitates an understanding of the "why" of a lobbying contact – in what area of decision making are they seeking involvement, or a decision that may benefit them or their client?

A stated purpose of reforming our current lobbying system is to, "*guide ethical conduct by public officials, enhance fairness and transparency in government decision-making, and to improve the quality of government decision-making.*"[17]

This recognises that, "*not only transparency but also integrity and fairness in decision-making processes are essential to protect the public interest*."[18]

To meet the goal of enhancing transparency and fairness in government decision-making, lobbying contact disclosure information must be provided to inform not only the 'who' and the 'when', but must also include the subject of discussion – the 'what' and 'why'.

For example, disclosing that a particular lobbying contact was for the purpose of discussing upcoming legislation, or seeking a government grant provides some details, but falls short of being 'truly accessible'. In contrast, specifying the meeting was to discuss gaming legislation (current or future), or that a grant is being sought from a particular government grant program provides more 'sunlight'. Members of the community have access to relevant details which may be pertinent to their evaluation of, and participation in, matters of public discourse of the day.

As stated by the OECD, "*to achieve transparency there must be **meaningful disclosure**.*"[19]

Therefore, timeliness of disclosure is also critical when determining whether the information disclosed is "truly accessible," and the extent to which the proposed lobbying regulation system will be fair, equitable and robust.

---

[16] Laboutková and Vymětal 2022; pg 5.
[17] *Draft Framework Report 2022*; pg 1.
[18] Laboutková and Vymětal 2022; pg 7.
[19] OECD, Vol 1, 2009; pg 57.

Summary: Criteria to Evaluate Robustness & Best Practice

Based upon available comparative research of international lobbying regulation regimes, clearly a one size fits all approach does not apply.

Although it is beyond the scope of this submission to attempt to apply the CPI Index to the *Draft Framework Report's* recommendations, however the five OECD Principles of Transparency do provide a useful evaluation framework which can be further 'fleshed out' by 'inverting' the specific criticisms of current Australian regimes cited in the May 2022 *Research Report* (detailed above).

- **Defining lobbying** – does the Draft Framework provide clear and comprehensive definition of lobbying activities to be regulated, as well as include a workable but comprehensive definition of lobbyists, including: in- house lobbyists, non-profit and for-profit entities, as well as acknowledging the range of public officials who are to be defined as those targeted to be lobbied?
- **Disclosure requirements –** are these recommended to include requirements applicable to the targets of lobbying? Further is sufficient meaningful and accessible information required for disclosure, including participants, the purpose (subject of discussion), intent (ie lobby to amend legislation, or to seek no change to legislation), and nature (in person meeting, other forms of communication), the 'who', 'what' 'where', 'when' and 'why', for example.
- **Reporting Processes and technology** – Will they be accessible to the public? Will they be user friendly for those responsible for disclosing and maintain disclosures?
- **Timeliness and ethics (ie updating of information)** – Will disclosed information be made public in a timely manner? Audits for compliance in keeping required information current and up to date?
- **Enforcement and compliance** – how enforceable is the proposed framework? Will it remain a 'soft' administrative system or will it be grounded in legislation? Will it rely on predominantly voluntary compliance, sanctions, or combination of both?

3. Comment - *Draft Framework Report* Recommendations

Overall, the *Draft Framework Report's* recommended reforms are to be welcomed as a substantial improvement on the current model in place, but with the caveat they could, and should, go further in some key areas of reform.

When considered in context of a robust best practice regulatory regime, as discussed above, some proposed elements would comply with the OECD's Principles of Transparency and key CPI Index indicators. However, some proposals do not sufficiently meet or deliver on those principles. Further, there remain significant 'gaps', such as enforcement and sanctions provisions, which risk weakening and undermining the positive reforms, both individually as well as an interrelated "package of reforms."

This section will apply the lens of current experience, as well as the lens of someone who will potentially need to be compliant with the proposed reforms.

Additionally, comment on the provided recommendations will include a comparative analysis with similar measures currently implemented in other Australian jurisdictions, specifically those cited in the *Draft Framework Report*: NSW, Queensland, South Australia and Victoria. Lobbying regulation regimes in Canada, Ireland and Scotland have also been incorporated into the evaluation matrix where appropriate as these international examples were cited in the *Draft Framework Report*.

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.'

Comment: Broadly support Recommendation 1 as it currently stands, but with minor reservations.

Although the proposed definition is very similar to that used currently in the Tasmanian Lobbyist Code of Conduct and also the Australian Government's Lobbying Code of Conduct, the significant and positive difference is the inclusion of all Members of Parliament (as per the proposed definition of *public representatives*).

While it is pleasing to see the recommendation cover all Members of Parliament, the proposed definition of lobbying activities would not cover instances where lobbyists seek to influence non-government party policies in the expectation these policies will be implemented should that party achieve government at a subsequent election. For example, by specifying communications prior to a decision regarding "*development or amendment of a government policy…*" the proposed definition of lobbying activities would not cover the recent example of the 2021 Memorandum of Understanding struck between the Tasmanian Hospitality Association (THA) and the-then in Opposition Tasmanian Labor Party, which shaped fundamentally the latter's gaming policy. Such an MOU arrangement with a non-government party can influence the position of that party, for example how they may vote following the signing of the MOU on legislation tabled by another Party or Independent, but because the lobbying activity at the time related to the development of a non-government policy, that contact would not necessarily need to be disclosed.

Alternative phrasing could be "*development or amendment of a public policy, program or position on a policy or program*" similar to the provisions in the Irish *Regulation of Lobbying Act 2015.*

It would also be worth clarifying that the term 'communications' covers all in-person or otherwise, verbal, written and electronic communications. This clarification could occur in the revised Code itself and/or in any accompanying explanatory and educative materials. While noting the proposed definition does cover all modes of communication, that may not be the initial assumption of others trying to navigate the regulatory system for the first time.

Is proposed Tasmanian "Lobbying activities" definition: as strong as other cited jurisdictions?

✔ = Tasmania to be as strong or stronger | ✔/✘ = unclear/about the same | ✘ = Proposed Tas reform still not as strong

VIC	NSW	QLD	SA	WA	CWealth	Canada	Ireland	Scotland
✔ Broader	✔ Broader	✘ QLD also specifies attempts to influence Opposition policy, etc	✘ SA specifically details seeking entitlements such as permits etc as lobbying	✔ Stronger	✔ Stronger	✔/✘ On a par	✘ Ireland captures *'any public policy'*	✔ Scotland limits to oral and face-to-face interactions only

3.1 New Recommendation: strengthen proposed 'lobbying activities' definition to remove the word 'government', to ensure definition covers any public policy. Further 'government grant' could also be amended to 'publicly-funded grant'.

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.

Comment: Support Recommendations 2's proposed exemptions from the definition of lobbying activities.

How do proposed Tasmanian exemptions rate against other jurisdictions?

✔ = Tasmania to be as strong or stronger | ✔/✘ = unclear/about the same | ✘ = Proposed Tas reform still not as strong

VIC	NSW	QLD	SA	WA	CWealth	Canada	Ireland	Scotland
✔	✔	✔	✔	✔	✔	✔	✔	✔

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

- ▽ an individual or organisation undertaking lobbying activities

Comment: Support Recommendations 3's proposed lobbyist definition, noting the subsequent definition of 'registered lobbyist'. It is also interesting to note other jurisdictions do not always distinguish between 'lobbyist' and 'registered lobbyist' – instead they are solely concerned with registered lobbyists.

How does proposed Tasmanian 'lobbyist' definition compare with other jurisdictions?

✔ = Tasmania to be as strong or stronger | ✔/✘ = unclear/about the same | ✘ = Proposed Tas reform still not as strong

VIC	NSW	QLD	SA	WA	CWealth	Canada	Ireland	Scotland
✔ Similar distinction between lobbyist and registered	✔ Similar distinction between lobbyist and registered	✔ Defines non-lobbyist	✔ Defines non-lobbying	✔ Specifies only registered lobbyist	✔ Specifies only registered lobbyist	✔ Specifies only registered lobbyist	✔ Focuses upon Lobbying activity	✔ Specifies only 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).

Comment: Support Recommendation 4's proposed definition of 'registered lobbyist', specifically the inclusion of in-house lobbying activities. It is worth noting that such an expansion will place Tasmania as a leader amongst both our national counterparts, although other jurisdictions have indicated their intent to also expand their respective definitions.

Is proposed Tasmanian "registered lobbyist" definition: as strong as other jurisdictions?

✔ = Tasmania to be as strong or stronger | ✔/✘ = unclear/about the same | ✘ = Proposed Tas reform still not as strong

VIC	NSW	QLD	SA	WA	CWealth	Canada	Ireland	Scotland
✔ Doesn't include in-house	✔ Doesn't include in-house	✔ Doesn't include in-house	✔ Doesn't include in-house	✔ Doesn't include in-house	✔ Doesn't include in-house	✔ 3rd party and % of time lobbying	✔ 3rd party and/or no. staff lobbying	✔

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.

Comment: Support Recommendation 5's proposed additional obligations for inclusion in the Lobbying Code of Conduct.

In the main the proposed recommendations reflect the tenor and detail of equivalent lobbyist obligations available in interstate and international systems. Some are specified in legislation and as such the terminology reflects that jurisdiction's drafting style, while others detail the obligations in their respective Lobbying Codes of Conduct, or a combination of the two.

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.

Comment: I welcome the inclusion of non-government Members of the State Parliament in Recommendation 6's proposed 'public representative' definition, as well as those public sector employees reporting directly to a Head of Agency, and the inclusion of CEO (or equivalent) and board members of state-owned companies and government business enterprises.

However, there appears to be an oversight in the roll-call of government-related roles, that of Secretary to Cabinet, (noting this position is not specified in the current Code of Conduct either). This role is referred to in the *Constitution Act 1934*, with the role's functions specified in section 8G of the Act, with an incumbent

drawn from either the House of Assembly or the Legislative Council to assist the Premier. Cabinet Secretaries do assist with ministerial portfolios, have staff dedicated to assisting in this function, and - most importantly – participate in Cabinet meetings, unlike Parliamentary Secretaries (which are appointees of the Premier of the day, not the Governor who appoints Minister and Secretaries to Cabinet on behalf of the Crown.)

Victoria includes Cabinet Secretaries in both the list of whom that state's Lobbyist Code applies, and definition of 'government representative', along with the role of Parliamentary Secretary.

Further, the new Tasmanian 'public representative' definition needs to capture different modes of employment in ministerial offices: both those employed as political appointees under a Crown Prerogative Contract, as well as those seconded from government departments (presumably employed under the *State Service Act 2000*). Again, this is captured in the Victorian Lobbyist Code which distinguishes between:

> *d. Ministerial officer employed under s. 98 of the Public Administration Act 2004*
>
> *e. person seconded or otherwise placed, contracted or engaged in a Ministerial office*[20]

Is proposed Tasmanian "public representative" definition: as strong as other jurisdictions?

✔ = Tasmania to be as strong or stronger | ✔/✘ = unclear/about the same | ✘ = Proposed Tas reform still not as strong

VIC	NSW	QLD	SA	WA	CWealth	Canada	Ireland	Scotland
✘ Vic slightly stronger – see above comments	✔ NSW doesn't include all MPs	✔ Qld covers govt & Opposition leader and Deputy Leader, not all MPs	✘ SA includes: all ministerial staff, not just advisors; & all public sector employees	✔ WA doesn't include all MPs. But does include Cabinet Sec, and all public sector employees including those contracted to ministerial offices	✔ Ministers & Parl Secs, but also all staff in those offices and public sector and public sector contractors. plus other national entities (ie Defence)	All MPs and their staff, and public sector contractors working in ministerial offices, plus other national entities (ie Defence)	All MPs and their Special Advisors; Civil Service Secretary Generals and their Deputies; CEOs, Directors of Authorities	All MPs, Special Advisors and Permanent Secretaries.

3.2 New Recommendation: clarify 'public representative' definition:

(a) to include the Cabinet Secretary position as defined by the *Constitution Act 1934*;

(b) to ensure definition covers all advisors employed in ministerial offices no matter the contractual arrangements (ie whether employed on a Crown Prerogative contract, departmental secondment, other employment arrangements)

[20] See https://www.lobbyists.vic.gov.au/code-of-conduct#3-definitions, *3.2 Government Representative*

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.

Comment: Fully endorse the Recommendation 7's proposed new minimum standards for public representatives to be included in the revised Lobbying Code of Conduct. However, it should specify any suspected breaches are to be reported in a timely manner, and to whom any suspected breaches are to be reported, ie Integrity Commission CEO or alternative.

3.3 New Recommendation: clarify proposed 'public representative' Lobbying Code of Conduct prescribed standards to specify any suspected breaches are to be reported in a timely manner, and to whom any suspected breaches are to be reported.

How do proposed Tasmanian public representatives' Conduct Code measure against other jurisdictions?

✔ = Tasmania to be as strong or stronger | ✔/✘ = unclear/about the same | ✘ = Proposed Tas reform still not as strong

VIC	NSW	QLD	SA	WA	CWealth	Canada	Ireland	Scotland
✔ Vic emphasises not engaging with unregistered or dubious lobbyists and employees	✔	✔ Qld Code of Conduct focuses on Lobbyists	✔ SA does specify where breaches are to be reported	✔ WA Code of Conduct focuses on Lobbyists	✔- Cwealth impose some requirements on those lobbied. Specifies responsibility to report any breaches to the Secretary.	✔ Canada Code of Conduct focuses on Lobbyists	✔ Ireland Code of Conduct focuses on Lobbyists	✔/✘ Scotland places MPs' responsibilities re Lobbying Code within the broader Code of Conduct for MSPs

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.

Comment: Support Recommendation 8's proposed expansion of entity details and information to be provided, presuming the revised register requirements will still specify the time frame by which periodic information is to be provided, as well as any updates, to ensure the Register is as current as possible.

For example, should a new lobbyist register and provide all the above required details in March 2023 this information may be out of date by the time they undertake lobbying of MPs in January 2024, hypothetically numerous donations could have been made since the initial lobbying registration/annual update and any relevant lobbying activity. This could have particular bearing in the instances that donations are made to the lobbied after the lobbying contact – a factor which may then not be publicly disclosed for some considerable time after the event.

Not only should it be disclosed whether a donation has been made, but to whom, and the date the donation was made. As presented in the *Draft Framework Report* currently, a lobbyist could provide a mere 'yes'/'no' answer. In context of the previous discussion regarding meaningful and accessible information which facilitates a clear understanding by the public of potential interests at play throughout a public policy decision-making process, the timeliness of the disclosure of such details could be pertinent to maintaining or eroding public trust.

Ideally, the donation amount should also be disclosed, however currently the proposed new state-based electoral funding and donations disclosures laws are still before the Tasmanian Parliament, and hence the only legislative framework available to require such disclosure is the federal political donations law. Unfortunately, disclosure of donations of $14, 500 or above provides considerable lee-way for non-disclosure of lesser amounts. However, should a future state-based political donations regime be implemented, there may need to be further reform of this particular measure to ensure its disclosure requirements are consistent, particularly in threshold amounts and specified timeframes for disclosure. For example, the current Bill flags two different donor reporting periods: a seven day reporting period during election campaign periods, and 21 days after donations made within a 6 month period outside election campaigns. Obviously, the proposed Lobbyist requirements regarding political donations disclosure should be consistent.

In the main, adoption of these recommended details to be disclosed potentially may see Tasmania leading the nation in this particular transparency mechanism. However, it would be useful to clarify that clients and client organisation include any foreign clients and their country of origin (as required in NSW), as well as the inclusion whether the lobbyist previously held a senior role in a political party as (as required in Victoria).

> **3.4 New Recommendation: clarify that registered lobbyists must disclose whether they have made a political donation either on behalf of themselves or their client(s) within the last twelve months, and if so, to whom and when the donation was made.**

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.

Comment: Support Recommendation 9's proposed disclosure contact details which are to be provided by public representatives, but with the following caveats and recommendations:

(a) Details to be disclosed in contact disclosure log -

I strongly recommend that "government decisions" is amended to "decisions". This change will still cover government decisions, but will not be limited to such, which is an important consideration when it comes to how non-government members may vote on government legislation etc, but also the focus of non-government (or Private Members') Bills and legislation, and policy promises.

(b) Clarify subject matter/portfolio area to be disclosed –

As discussed earlier in this submission, the principle of 'accessible information' makes it crucial to ensure that by 'nature of the lobbing activity' it is understood the **subject** of the lobbying activity is to be detailed as well. For example, it is insufficient for a contact disclosure report to state the nature of the reported lobbying activity related to the drafting of legislation or development of a policy, but remain silent on the subject of the proposed legislation or amendment, or policy.

To meet the stated goal of strengthening the public's trust in our system of democratic governance, it only makes sense to ensure that not only who met whom, when, where and how it's disclosed, but also the what and why.

Further, should 'other' be selected, then the purpose and subject of the lobbying contact also needs to be specified should it not be covered by the other four options.

It may be that it is the intent of the proposed reforms to require contact disclosure details to specify the subject or portfolio area which is the focus of a particular lobbying contact. However, the wording of both Recommendation 9 and the supporting discussion provided in the *Draft Framework Report* is unclear on this matter and warrants clarification.[21]

(c) Contact disclosure log reporting timeframe –

I recognise the *Draft Framework Report* recommendations reflect a concerted effort to ensure public representative contact disclosure logs are updated in a timely manner, that being within five days of the lobbying contact in question.

However, it should be clarified and made explicit that not only is the contact disclosure log updated by public representatives within the specified five-day period, but that those contact disclosure log details are then immediately made public upon updating. That may be the intent as expressed by the current Recommendation 9, however it is a little unclear.

Further to the proposed five-day timeframe by which to update the contact disclosure log, I would urge consideration of reducing that to three days.

The stated objectives in the *Draft Framework Report*, included enhancing the 'fairness', 'transparency' and 'quality' of government decision-making process, while also noting that:

> "*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."*[22]

A key focus of lobbying is upon proposed new legislation and/or amendments to current laws. Not all draft legislation, otherwise referred to as Bills, are subjected to a public consultation process or any form of

[21] See the *Draft Framework Report* 2022; pages 15-17.
[22] *Draft Framework Report* 2022; pg 2.

parliamentary committee pre-debate scrutiny. Hence, it s not unusual for Bills to be tabled in the Parliament with no pre-warning for non-government MPs, the media or the broader community.

Further, the Tasmanian Lower House Standing Orders provide for a Bill to be tabled on a Tuesday and be considered mature and ready for debate three days later, on the Thursday. There is also precedent for Standing Orders in both Chambers to be suspended to allow debate on a Bill tabled that same day.

While a three-day disclosure period would still not necessarily capture any last minute lobbying contact relevant to such a sudden same-day debate on a piece of legislation, it would be consistent with the routine provisions provided in the Parliamentary Standing Orders. It would also deliver on the principle of providing meaningful and accessible information necessary to reassure the public "*decisions are being made without improper power or influence."* It goes without saying that wherever possible such relevant accessible information ideally should be provided before, or at least during, but definitely not after, a final decision – such as the passage of legislation – is completed.

For example, in July 2022 I submitted a Right to Information (RTI) request for the ministerial diaries of the three relevant portfolio Ministers engaged in the *Climate Change (State Action) Amendment Bill 2021*, detailing any stakeholder meetings held, during a defined period, on climate change reform and the development of that specific Bill. Despite the parliamentary debate on the Bill concluding in November 2022, I received one RTI response dated the 31st of January 2023, providing the requested Minister's meeting diary contents, two months following the conclusion of that specific Bill's debate.

This unfortunate failure to provide relevant and accessible information in a timely manner does not mean any 'improper power or influence' was at play in the decision-making process of that Bill – but it does risk eroding public confidence and trust in whether decisions are being made "fairly and in the public interest."

Should it be perceived that contact disclosure logs are similarly 'releasing' relevant details which may have some bearing on those involved in making a final decision – such as voting in the parliament - after the decision-making process had concluded, that could further compound public disquiet and lack of confidence in our systems of governance.

(d) Responsibility to update contact disclosure logs –

Recommendation 9 allocates responsibility to public representatives for the disclosure of the prescribed information to the contact disclosure log, rather than the registered lobbyists involved.

As stated in the *Draft Framework Report* this is justified on the basis that the Integrity Commission jurisdiction to investigate misconduct is restricted to 'public officials' and not the private sector. Further, the implication elsewhere is perceived 'onerous' reporting obligations may prove a disincentive for smaller lobbyist entities or individuals.

This would mean Tasmania is out of step with other interstate and national jurisdictions which tend to require the lobbyists to shoulder the substantial, if not all, reporting disclosure requirements. Some, such as Queensland have developed a hybrid model which facilitates cross-referencing, as both the lobbied and the lobbyists have to record the same contact.

While acknowledging the current ICT jurisdiction limitations in this context, requiring only public representatives to maintain a contact disclosure log inevitably reduces the scope of information which can be gathered. For example, the *Draft Framework Report* states this will mean details such as intended outcomes from lobbying activities -required in Ireland for example – will not need to be disclosed. However, that can be a pertinent piece of information for other affected stakeholders or members of the community seeking to understand which interests may or may not have gained from any particular lobbying contact and decision-making process.

Nationally, the Commonwealth funding and disclosure scheme administered by the Australian Electoral Commission under the *Commonwealth Electoral Act 1918* provides an example of cross-referencing where both recipients of political donations above the threshold amount are required to disclose certain information, as are the donors.

This shared-responsibility precedent frequently provides evidence of the capacity to cross reference between the two sets of records resulting in additional 'accessible' information being available to the public. For example, the most recent release of disclosure returns, released on the 1st of February year, saw a subsequent *Saturday Mercury* newspaper front page headline asserting 'Donors Uncovered' via a 'special investigation'. [23] The additional donation details discussed in this article were obtained by the journalist cross-referencing the more high profile Recipients' disclosures site, with the records on the lower profile Donors site of the AEC database. In many instances, Donors chose to volunteer information additional to that required by the Act, and that provided by their respective recipients.

The power of potential cross-referencing has a legitimate role in creating a positive cultural change towards greater disclosure, as well as furthering the Commission's stated goal to foster a predominantly voluntary based compliance environment rather than one solely reliant upon punitive sanctions.

Rather than merely accept the limitations imposed by the almost 15 year-old *Integrity Commission Act 2009* it would be opportune to recommend an investigation into how best amend the Act to provide the Commission with jurisdiction to investigate misconduct and non-compliance by registered lobbyists for the purpose of administering the Lobbyist Register and Code of Conduct.

Currently work is underway on reviewing the *Integrity Commission Act 2009.* [24] Despite the public consultation component of that process closing in September last year, it would be logical to include reviewing any necessary powers and functions consistent with current identified areas of lobbying regulation oversight reforms.

How does the proposed Tasmanian contact disclosure reports measure against other jurisdictions?

✔ = Tasmania to be as strong or stronger | ✔/✘ = unclear/about the same | ✘ = Proposed Tas reform still not as strong

VIC	NSW	QLD	SA	WA	CWealth	Canada	Ireland	Scotland
✔ None	✔ Quarterly publication of diary extracts detailing who met, lobbyists present, name of lobbyist client and purpose of meeting	✔/✘ Although Qld has hybrid reporting system, the proposed Tas 5 day (or shorter) reporting framework is stronger than Qld's monthly publishing of ministerial diaries, with name and purpose of meeting. Lobbyists required to report every lobbying contact with date, client, MP rep and purpose of contact	✔ Lobbyist required to submit annual report with details of every lobbying contact, date, and subject matter	✔ None	✔ Requires lobbyists to disclose matter for discussion before meeting/contact	✘ Requires Lobbyists to submit regular detailed returns	✘ Requires Lobbyists to submit regular detailed returns.	✔ Advises MPs to keep notes or have a staffer/witness to keep notes

3.5 New Recommendation:

(a) Clarify the nature of lobbying activities decision is not limited only to 'government decisions' in relation to legislation or policy, but instead reflect fact non-government MPs' legislative and policy agenda, including voting record, may also be subjected to lobbying activities;

[23] The *Saturday Mercury*, 'Donors Uncovered', 4 February 2023; pgs 1 & 5.
[24] See Attorney General the Hon. Elise Archer MP media statement, '*Consultation on potential reforms to the Integrity Commission Act 2009*', 8 July 2022.

(b) Ensure subject matters and/or portfolio areas are required to be disclosed in the contact disclosure log;

(c) Reduce the time period in which the contact disclosure log is to be publicly updated to three days following the occurrence of lobbying activities;

(d) Prioritise exploring legislative mechanisms to extend the ICT's jurisdiction to investigate misconduct and non-compliance by registered lobbyists, consistent with its current legislated responsibility for administering the Lobbyist Register and Code of Conduct. Further, require both public representatives and registered lobbyists update their respective contact disclosure logs as part of the proposed electronic database to be administered by the ICT.

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.

Comment: Support Recommendation 10's proposed banning of gifts between registered lobbyists and public representatives.

However, the language used needs to be unequivocal ie 'must not accept the gifts' and 'must not give gifts' instead of 'should not'.

3.6 New Recommendation: replace 'should' with 'must' to clarify unequivocally that gift giving between registered lobbyists and public representatives is prohibited.

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

Comment: Support Recommendation 11's proposed banning of success fees paid by clients to lobbyists.

This is a long overdue reform, and if implemented will finally bring Tasmania into line with every other Australian state. Currently Tasmania and the Commonwealth have not banned success fees.

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.

Comment: While the need to apply cooling-off provisions to all public representatives as per the proposed new expanded definition in recommendation 12 is a welcome and supported reform, it is disappointing that the recommended specified period remains the current 12 months.

It is interesting to note that of the 11 submissions quoted in the Overview of Submissions document one considered a 12-month period "reasonable" (although APGRA did indicate 12 months for non-elected

representatives and 18 months for elected representatives).[25] However, the bulk of other submissions cited ranged across 18 months, to two, five, eight, or 10 years.

Despite the apparent majority of submissions calling for an expanded cooling-off period, the *Draft Framework Report* states that the recommendation to leave unamended the current 12 month requirement, "*takes into account the specific context of Tasmania, where employment for former officials is more difficult than federally and in other state jurisdictions*."[26] No evidence is provided to support this contention, and It can be equally argued that in fact, the 'specific Tasmanian context' is also characterised by strong informal networks across the public and private sectors. Rightly or wrongly, the general public awareness of such school/family/colleague networks run the very high risk of the perception of potential nepotism at play.

It is because of Tasmania's 'specific context' that extra effort is required to mitigate perceived or actual nepotism versus unavoidable networks sustained by unavoidable proximity.

Is proposed Tasmanian 12-month cooling-off period as rigorous as other jurisdictions?

✔ = Tasmania to be as strong or stronger | ✔/✘ = unclear/about the same | ✘ = Proposed Tas reform still not as strong

VIC	NSW	QLD	SA	WA	CWealth	Canada	Ireland	Scotland
✘ 18 mons for Cabinet members; 12 months for Parl Secs, ministerial staff, senior public sector execs.	✘ 18 months for Ministers & Parl Secs.	✘ 2 years for all lobbied parties defined under the Act.	✘ 2 years for ministers; 12 months for Parl Secs, ministerial staff & public sector execs.	✔/✘ 12 months for all lobbied parties defined under the Act.	✘ 18 months for Ministers, Parl Secs; 12 months for MP staff at advisor level or above, Agency Heads and senior execs; ADF at Colonel level or above.	✘ 5 years for designated public office holders as defined by the Act.	✔/✘ 12 months for Ministers, Special Advisors and Senior Public Sector Officials as defined in Act.	✔ None apparently

3.7 New Recommendation: expand Tasmania's current rotating-door 12-month cooling-off period to two years.

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.**

Comment: I welcome recommendation 13 to address the issue of 'dual hatting'.

Again, it would be a stronger provision in the public interest, and provide a more substantial 'circuit-breaker' if the designated period was longer than the proposed 12 months, at least two years if not the next full term of office. It is worth noting the 2022 Queensland Coaldrake Report strongly recommended that "*if an individual plays a substantive role in the election campaign of a prospective government, they should be banned from engaging in lobbying for the next term of office*."[27]

[25] *Overview of Submissions Received: Reforming Lobbying Oversight in Tasmania* report, 17 October 2022; pg 22-23.
[26] *Draft Framework Report* 2022; pg 19.
[27] Coaldrake, P. June 2022; pg 57.

How does proposed Tasmanian 'Dual Hatting' restrictions compare with other jurisdictions?

✔ = Tasmania to be as strong or stronger | ✔/✘ = unclear/about the same | ✘ = Proposed Tas reform still not as strong

VIC	NSW	QLD	SA	WA	CWealth	Canada	Ireland	Scotland
✔	✔	✔	✔	✔	✔	✔/✘ Prohibited for 'specific period of time'	✔	✔

3.8 New Recommendation: increase proposed restrictions on electoral campaign related 'dual hatting' from 12 months to at least two years.

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.**

Comment: I support and welcome this recommendation 14 regarding disclosure of recent lobbyist political donation record. While recognising that the broader public policy of political donations disclosure reform is beyond the scope of the Integrity Commission and this particular review of the state's lobbyist regime, this recommendation makes sense and will contribute to meaningful and accessible information being provided.

However, as per comment on recommendation 8 above, in order for such disclosure to contribute meaningfully to an informed public discourse, lobbyists should be required to not merely submit a 'yes' or 'no' response, but also disclose to whom and when the donation was made.

How does proposed Tasmanian lobbyist political donations disclosures compare with other jurisdictions?

✔ = Tasmania to be as strong or stronger | ✔/✘ = unclear/about the same | ✘ = Proposed Tas reform still not as strong

VIC	NSW	QLD	SA	WA	CWealth	Canada	Ireland	Scotland
✔	✔	✔	✔	✔	✔	✔	✔	✔

4. Comment – Other Matters Arising

There are further significant key areas of lobbying reform which the *Draft Framework Report* touches on but does not provide specific formulated recommendations:

1. the lack of recommendations for a legislated lobbyist regulatory scheme;
2. the ongoing reliance on voluntary compliance of participants rather than utilise sanctions and penalties;
3. Resourcing implications of implementing the proposed reformed lobbyist regulation model

4.1. Need for a Legislated Lobbying and Lobbyist Regulation Scheme

The opening sections of this submission reflected on the range of options between a 'soft' administrative regulatory approach and the perceived 'hard' legislative regulatory framework. Ideally to provide a transparent and consistent approach, a rigorous Tasmanian Lobbying and Lobbyist Regulation Act is required.

The OECD Principles of Transparency report observes:

> *"Regulation of lobbyists' behaviour has focused on codes of conduct. These establish principles of behaviour – such as honesty, openness and professionalism – and rules to enforce them. Current debate centres on* ***whether codes should be voluntary or imposed by law****; experience suggests that legislative regulation is preferable."*[28]

As stated by select contributors summarised in the provided ICT 2022 consultation report lobbying is a legal and legitimate activity and mode of participation within our democratic system – however it is, to put it simply, tainted with a sense of suspicion and 'on the nose' reputation within the broader community. Therefore, a high regulatory approach may foster a degree of 'fairness' for the lobbyist profession. A legal framework can be perceived as providing a clear 'level' playing field regarding expectations and compliance, which can encourage improved community trust in quality of robust oversight.

Once the public can see a transparent and rigorously enforced regulatory system, there is a potential for greater confidence to grow, and diminishing extent to which professional lobbyists may be regarded with opprobrium.

Legislative incentive may also foster a culture of agreed high standards required to deliver expected integrity. As such, legislation does not necessarily preclude voluntary compliance, but it does provide a clear, established redress mechanism to dissuade any potential 'bad actors'.

Too often community representatives, and others, have assessed and criticised Tasmania's oversight and transparency mechanisms as being "without teeth".

Any reformed lobbyist management regime must be provided legislative teeth.

Other jurisdictions with a Legislated Lobbying and Lobbyist Regulation System?

TAS	VIC	NSW	QLD	SA	WA	CWealth	Canada	Ireland	Scotland
Administrative	Administrative	Law	Law	Law	Law	Law & Admin	Law	Law	Law

4.2. Need for Rigorous Compliance Requirements, including Sanctions and Penalties

Related to the need for a legislative framework is the consideration of compliance enforcement including the provision of penalties and sanctions.

The OECD's Principles of Transparency project notes that when assessing lobbying regulation schemes in place across a range of jurisdictions, the following common theme emerged:

> "*Promoting compliance and enforcement is proving to be a particular challenge. Enforcement of codes of conduct and integrity standards remains relatively low, and the bulk of surveyed lobbyists indicate that there are either no sanctions for breaching codes of conduct or, if there are, they are not compelling enough to deter breaches."*[29]

Currently the main sanction available is for a Tasmanian lobbyist to be 'deregistered' for non-compliance with the Lobbyist Code of Conduct. However, as noted in the *Draft Framework Report* there is no means by which to sanction directly public representatives for any failure to comply with the proposed reformed lobbying regime.

I note the *Draft Framework Report's* caution that the goal of reformed lobbyist regulation is to improve public trust but not "creating traps" for non-compliance, as well as avoiding onerous and cumbersome administrative burdens for those required to comply with the system.[30] Yet, requiring timely disclosure of the subject matter of lobbying contact, especially when involving matters of public policy and/or

[28] OECD Vol 1, 2009; pg 14.
[29] OECD, Principles of Transparency, Vol 3, 2014; pg 3.
[30] *Draft Framework Report 2022*, pg 2.

determination of public funding or resource allocation, is arguably consistent with the stated key goal of improving public trust via strengthened transparency and accountability measures. The OECD Principles of Transparency report, acknowledges the important role of educative, administrative efforts to assist in compliance, but also states, "*visible and proportional sanctions applied in a timely manner provide "teeth" for effective enforcement."*[31]

There is a risk that by extending a 'soft' administrative approach to a purported reformed and strengthened lobbying system for Tasmania will immediately undermine the veracity of these reforms in the eyes of an already frustrated, suspicious and jaded broader public.

The community do not only want and expect our regulatory systems intended to protect the transparency and fairness of our democratic systems of governance to be rigorous, but that those entities responsible for implementing those oversight mechanisms will "have teeth".

To put it bluntly, if the Integrity Commission is going to continue to have responsibility for oversight of our lobbying regulation system, but does not have the legislative tools available to issue meaningful sanctions and penalties, there is considerable risk of further undermining confidence in not only the lobbying regime but also the Integrity Commission.

There needs to be as equally transparent mechanisms for reporting potential breaches, how those reports are handled, investigated and determined, and corresponding consequences for any upheld allegations.

For example, the *Draft Framework Report* makes the welcome recommendation to ban the practice of success fees and gift giving. How is the prohibition upon those activities going to be it be monitored for compliance, and what are the penalties for breaching?

As has been observed elsewhere, breaching a Code of Conduct is quite different to breaking the law.

4.3. Disclosure of Compliance Breaches

Additional to sanctions being required, there must also be a mechanism by which failure of either public representatives or registered lobbyists to comply fully with requirements is disclosed, again in a consistent, timely and transparent manner.

It is worth noting, for example, NSW has a Lobbyist Watch Register for those registered lobbyists who have failed to fully comply with that jurisdiction's requirements.

While we need the flexibility when deciding which administrative or legislative option to employ and is the best fit, it is arguable that when it comes to investing in protecting the integrity of our democracy a legislated framework is worthwhile. I note the *Draft Framework Report* flags that the current absence of any recommendations regarding enforcement and sanctions does not preclude the Commission proposing recommendations at a future date – I urge that the Commission does reconsider recommending such mechanisms be included in any new lobbying reforms.

Additionally, codifying any new lobbying reforms within legislation may also provide an appropriate mechanism by which to both formally extend the Commission's jurisdiction from 'public officers' to all those participating in lobbying activities, as well as provide delivery mechanisms for appropriate penalties.

Comparison of jurisdictions' sanctions and penalties for breaches of their lobbying regulations.

VIC	NSW	QLD	SA	WA	CWealth	Canada	Ireland	Scotland
Removal from register	Suspended registration &	Removal from register,	Fines and imprison-ment	Fines and or removal	Removal from register	Fines and imprisonment	Fines and imprisonment	Fines

[31] OECD, Principles of Transparency, Vol 1, 2009; pg 13.

	maintenance of a Lobbyist Watch List	warning or suspension		from register				

4.4. Resourcing implications of proposed reformed lobbying regulatory system

The *Draft Framework Report* makes the pertinent point that the implementation of some or all of the recommended lobbying regulation reforms, including ongoing maintenance and administration of the electronic lobbying database, will require immediate and ongoing resourcing and funding.[32]

This necessary resourcing of a robust best-practice lobbying regulatory system should be regarded as a small investment in protecting and enhancing the transparency and integrity of our democratic system of governance. Therefore, it would be appropriate for clear resourcing requirements to be identified and corresponding recommendations to be included in a final framework report.

It is also worth noting that the proposed recommendation that all state elected representatives, including Opposition and independent MPs should be included in the public representative definition – which I support in principle – and therefore will be required to comply with contact disclosure log requirements, will also have resourcing implications. For example, independent Legislative Councillors are resourced for one full time equivalent staffer, whereas government MPs, have access to an increased number of staff. Similarly, even if non-government party endorsed MPs only have one dedicated electorate staffer, they may have access to additional shared political parliamentary staffers. Hence there is a potential these resourcing inequalities may result in these additional disclosure reporting requirements applying a disproportionate increased workload on some public representatives compared with others.

While it may be beyond the scope of this consultation process and the ICT to recommend any potential equitable alternatives, it is important to at least acknowledge this consideration. And to further reiterate, that if it is required that an office comprising one independent MP plus 1 staffer comply with contact disclosure reporting requirements, then it should not be considered too onerous for registered lobbyists to also be required to comply in a dual reporting model.

5. Concluding Comments

> *"Lobbying is perceived in most countries as a practice that perpetuates special interests at the expense of the public interest… Improving the transparency and integrity of the public decision-making process, particularly by addressing lobbying, is therefore high on many governments' agendas."*[33]

At the outset I acknowledge the proposed changes as outlined in the *Draft Framework Report* would improve Tasmania's current lobbying regulation system, and I thank all those involved for their work on this important project. However, this submission argues for further clarification of certain key recommended provisions, such as the requirement to include the purpose and subject of discussion for lobbyist contact, and strengthening of proposed elements such as inclusion of penalties for non-compliance.

To revisit the OECD Principles for Transparency in Lobbying, previously cited in section 2, provides an opportunity to evaluate the *Draft Framework Report's* recommendations, specifically whether they 'go far enough' to improve upon Tasmania's current framework.

[32] *Draft Framework Report*, 2022; pg 17.
[33] OECD, Vol 3, 2014; pg 30.

- **Defining lobbying** – the *Draft Framework Report* recommends strengthened definition of lobbying activities to be regulated, as well as a broader definition of lobbyists, including: in-house lobbyists, non-profit and for-profit entities.

  Further, the definition of 'public representative' broadens and strengthens those recognised as potential targets of lobbying activities.

- **Disclosure requirements –** Despite the recommendations for increased details to be disclosed of lobbying contact, in the interests of providing 'accessible information' there is scope for further clarification regarding the provision of sufficient subject, purpose and intent of lobbying content. Further, the contact log disclosure timeframe could be further reduced to three days.

  Lobbyists should also be required to comply with contact log disclosure requirements consistent with the requirements proposed for public representatives.

- **Reporting Processes and technology** – the proposed electronic and searchable lobbyist and disclosure database, to be built, maintained and administered by the Integrity Commission presents a significant improvement on the current situation.

  However, reporting of failure to comply and further breaches also need to be reported in a consistent, fair and transparent manner.

- **Timeliness and ethics (ie updating of information)** – further detail is required regarding any proposed timeframes by which Lobbyist registration details are to be updated. Timelines of disclosure is an important factor also regarding the provision of information to be provided via the contact disclosure log, and any reported non-compliance matters.

- **Enforcement and compliance** – This remains the weakest element of the proposed new framework, which appears to be proposed to remain a 'soft' administrative system rather than be grounded in legislation. To strengthen the proposed reformed model and to invest in public confidence, legislative reforms need to be investigated to expand the Integrity Commission's current jurisdiction enabling it to investigate misconduct of 'public officials' to also include registered lobbyists for the purposes of administering and enforcing Tasmania's lobbyist regulation system.

The *Draft Framework Report* recommendations present a considerable and significant improvement on Tasmania's current Lobbyist oversight and regulation system in relation to key elements of the OECD's Principles of Transparency. However, the perceived lack of compliance and sanction 'teeth' means there is a risk that the proposed reformed lobbying regulation system would still be found lacking when measured against the third OECD transparency principle above.

It is also important to place on the record that ideally Tasmania's lobbying regulation regime would include the state's local government tier. Recognising the limitation in jurisdiction and hence scope, that point has not been belaboured by the submission but the absence of this significant tier of government must be acknowledged.

The ICT could recommend in its Final report that consideration of including local government into the lobbying regulation reforms be considered by government in light of the current broad-scale review of local government in Tasmania currently underway.

Similarly, potential legislative amendments and reforms necessary to provide the Integrity Commission the 'legislative teeth' by which to implement and oversight a reformed lobbying regulatory framework, could be incorporated into the current review of the *Integrity Commission Act 2009* which is also currently underway (with submissions closing in September last year).

To conclude, the proposed lobbying regulation reforms as outlined in the *Draft Framework Report* would shift Tasmania's current 'goal posts', some more than others, towards a robust and best-practice system.

Hence, in principle all 14 *Draft Framework Report* recommendations are supported, albeit with caveats in some instances where further clarification or additional reforms have been identified. While there are some long over-due and welcome reforms recommended in the *Draft Framework Report*, there are some other equally important and long-overdue measures left partially, or completely, unaddressed, and others which require further detail and clarification. In general, however, the *Draft Framework Report's* recommendations do present steps in the right direction and will assist in strengthening the transparency, fairness and integrity of Tasmania's public policy decision-making processes.

References

Bitonti, A., and Hogan, J., 'Lobbying Regulation', in P. Harris et al. (eds.), *The Palgrave Encyclopedia of Interest Groups, Lobbying and Public Affairs*, 2021.

Coaldrake P., *Let the Sunshine In: Review of culture and accountability in the Queensland public sector*, *Final Report*, 28 June 2022.

Integrity Commission Tasmania *Draft framework report: recommendations for reforming lobbying oversight in Tasmania*, December 2022.

Integrity Commission Tasmania, *Overview of Submissions Received for Integrity Commission Consultation Process: Reforming Lobbying Oversight in Tasmania*, Interim Report, October 2022.

Integrity Commission Tasmania, *Research Report – Reforming Oversight of Lobbying in Tasmania*, May, 2022.

Laboutková S, and Vymětal P., A black box assessment of institutional quality: the challenge of evaluating lobbying transparency, *Policy Studies*, 2022.

Laboutková, Š. and P. Vymětal., Measures of Transparent Lobbying: How to Approach It and Evaluate It: A Preliminary Stage. In: Matějová, L. (ed.) *Proceedings of the 21st International Conference Current Trends in Public Sector Research 2017.* Brno: Masaryk University, 2017.

OECD, *Lobbyists, Governments and Public Trust, Volume 3: Implementing the OECD Principles for Transparency and Integrity in Lobbying*, OECD Publishing, 2014.

OECD, *Lobbyists, Governments and Public Trust, Volume 1: Increasing Transparency through Legislation*, OECD Publishing, 2009.