FRAMEWORK REPORT

14 June 2023

MODEL FOR REFORM OF LOBBYING OVERSIGHT IN TASMANIA

INTEGRITY COMMISSION TASMANIA

The objectives of the Integrity Commission are to:

- improve the standard of conduct, propriety and ethics inpublic authorities in Tasmania;
- enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with; and
- enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

We acknowledge and pay our respects to Tasmanian Aboriginal people as the traditional owners of the Land upon which we work. We recognise and value Aboriginal histories, knowledge and lived experiences, and commit to being culturally inclusive and respectful in our working relationships with all Aboriginal people.

This report and further information about the Commission can be found on the website www.integrity.tas.gov.au

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1. Introduction

This report sets out the Board of the Integrity Commission's proposed model 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 and internationally, while taking into account the specific context of Tasmania, and minimising administrative burden for those impacted by new regulations.

We have developed this proposed model 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 model are to:

- guide ethical conduct by public officials,
- enhance fairness and transparency in government decision-making, and
- improve the quality of government decision-making.

Overall, a transparent lobbying oversight system avoids secrecy while still allowing some privacy for public officials 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 may lead to perceptions that there is an imbalance towards decisions being made due to powerful minority interests. It is therefore in the interests of both public officials 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. 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 a system that is too difficult, costly, or otherwise overly burdensome for voluntary compliance.

Our proposed model also accounts for the perspectives of those who would be subject to regulatory measures; both those seeking to advocate for an interest, and those potentially influenced by lobbying activities.

In developing our model, 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 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 officials, as well as advisory services for lobbyists and public officials, to ensure that the oversight system is well understood and both lobbyists and public officials 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 interdependent elements for doing so, from administrative adjustments to substantial new measures.

There are two main mechanisms for lobbying oversight:

(i) establishing and maintaining a register of lobbyists; and

(ii) establishing and maintaining a system of disclosure of lobbying activities.

The goal of each is increased transparency in **who** is seeking to advocate for an interest, **how**, and in **which** areas.

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

- Definition and scope reform: lobbying activities, lobbyists, and public officials
- Lobbying register reform
- Contact 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 provided to those affected to assist them in understanding and complying with their new obligations.

Properly resourcing the Commission's implementation, monitoring, education, and ongoing review of the new system will also be essential for our oversight to be effective.

1.1. Our process for developing this model

In developing this model, we considered stakeholder and community views solicited through an initial 4-month public consultation process in 2022.

A **consultation paper (PDF, 1.1 MB)** was published identifying some issues and risks associated with lobbyists and lobbying within State Government and their potential impact on public decisions. Responses to the consultation paper guided our understanding of community expectations around transparency and accountability in lobbying.

A detailed **research report (PDF, 1.9 MB)** accompanied the consultation paper and examined the topic in more depth.

We received 28 submissions to the consultation paper, representing individuals and groups from a range of backgrounds, including:

- people affected by decisions resulting from lobbying
- previous or currently registered third-party lobbyists
- individuals or organisations that conduct lobbying
- previous or currently elected representatives or public servants who have been lobbied
- people with specific expertise or interest in this aspect of governance, and
- people with an interest in the integrity of our democratic systems of government.

In October 2022, we published an **overview** of the key points raised in the submissions.

Following consideration by the Board, we determined to release a draft framework report in early 2023 to key stakeholders affected by our proposed reforms, being those who are included in the expanded definition of 'public official'. We received 6 responses to the draft framework.

Following consideration of these responses, the Board of the Commission has refined the model. In the revised model, the scope of 'public officials' (those who are lobbied) is larger than under the current model, and there are new obligations on this cohort (primarily a requirement to disclose details of meetings with lobbyists). The scope of the definition of 'public official' is important because of the cooling-off period that applies to former 'public officials'.

Other refinements include:

- additional exclusions from the definition of 'lobbying activities'
- greater clarity in the proposed model about what activities are not intended to be captured by the definition of 'lobbying activities'
- refining the requirements in relation to political donations, i.e., by linking any disclosure requirements to thresholds in legislation.

1.2. Where to from here?

This Report represents the Board of the Commission's proposed model. It will be released publicly for a period of 6 weeks and provided to key stakeholders and submitters. A final model will then be considered by the Board.

A new Code of Conduct will be drafted, reflecting the proposed elements set out in the Report, and any further changes arising from the final round of consultation.

The practical elements of the new Code (the Contact disclosure log and educative materials to assist those affected) will be developed in early 2024, with implementation proposed for the second half of 2024.

2. Key elements of proposed model

2.1. Definitions and scope

Definition of 'lobbying activities':

Communications with 'public officials', in which a person or entity seeks to advocate for or represent an interest, prior to a decision regarding:

- making or amendment of legislation
- development or amendment of a government or non-government policy or program
- awarding of a government contract or grant, and
- allocation of funding.

Exemptions from the definition of 'lobbying activities':

- communication occurring in the normal functioning of government operations, limited to communications between colleagues, staff, or other public officials
- communication by or on behalf of an individual or group of individuals about personal or family matters
- communications that are already transparent by nature such as in public forums
- communications that are a normal part of the democratic process, such as contact with constituents, or constituents seeking advice or assistance from their local member
- activities that are already public such as submissions made in response to public consultation processes or presentations made to public hearings or committees
- communications in response to a request for tender
- matters raised as part of Government briefings of either House of Parliament including a committee, and
- unsolicited correspondence that does not relate to a current or particular policy issue, for example peak bodies sharing their budget submissions.

Definition of a 'lobbyist':

- A person or entity undertaking lobbying activities

Definition of a 'registered lobbyist'

For the purposes of triggering the threshold for inclusion on the Register of Lobbyists, the definition of a 'registered lobbyist' is either of the following:

- any person or entity (including its employees) who is paid to conduct lobbying activities on behalf of a third-party client (i.e., 'third party lobbyist')
- any person whose role is substantially to conduct lobbying activities on behalf of a corporation or entity1, either as an employee or contractor (i.e., 'in-house lobbyist').

1 Excluding not-for-profit organisations and unions

Obligations for lobbyists:

- act in good faith and avoid conduct likely to bring discredit upon themselves, a public official, their employer, or client
- take steps to ensure that the public official they have lobbied does not rely on inaccurate information
- indicate to their client their obligations under legislation and the Lobbying Code of Conduct
- not divulge confidential information unless they have obtained the informed consent of their client, or disclosure is required by law
- not represent conflicting or competing interests without the informed consent of those whose interests are involved
- inform public official of any conflict of interest
- not place public official in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on them.

Definition of 'public official' for the purpose of lobbying regulation:

- a Minister, Secretary to Cabinet, or a Parliamentary Secretary
- a member of Parliament in the House of Assembly
- a member of Parliament in the Legislative Council
- a person employed as a Ministerial or political adviser (however appointed), i.e., where the majority of the person's role is to provide political advice
- a head of agency appointed under the State Service Act 2000.

Minimum standards for public officials in relation to interacting with lobbyists.

- any contact that involves lobbying activities must be documented
- preferential treatment and/or access to particular individuals or groups must not be given
- informal lobbying representations must be accounted for in reporting requirements
- information that would produce unfair advantage must not be divulged, and
- any reasonably suspected breach by lobbyists of the Lobbying Code of Conduct must be reported to the Integrity Commission as soon as practicable.

2.2. Lobbyist register

Entity information required for the Register is to include the following information:

- business registration details
- names and positions of persons employed, contracted, or engaged
- names of clients and client organisations
- contact details
- whether acting as a third-party lobbyist, or in-house lobbyist
- whether the lobbyist has worked as a public official (defined in section 2.1) in the previous 12 months, and to specify the role
- whether the lobbyist has been paid to advise a candidate on a Tasmanian election campaign in the previous 12 months, and

- whether the lobbyist has made a donation to a public official or Tasmanian-registered political party in the last 12 months above the relevant threshold set out in relevant legislation.

2.3. Disclosure

Public officials are required to disclose contact that meets the definition of 'lobbying activities' - on a Contact disclosure log within 5 days of the contact.

The disclosure is to include the following information:

- public official name and title
- if meeting or phone call, other public officials 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 decisions in relation to:
  - making or amendment of legislation
  - development or amendment of a government or non-government policy or program
  - awarding of a government 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.

2.4. Specific practices related to lobbying

Gift giving between lobbyists and public officials is banned.

Prior to accepting any gift or benefit - with the exception of small token gifts including diplomatic gifts - public officials must first check the lobbyist register, and if the provider of the gift is a registered lobbyist, they must not accept the gift. Public officials should not give gifts to any person undertaking lobbying activities.

The acceptance of success fees paid from clients to lobbyists is banned.

2.5. Separation between lobbyists' political and lobbying activities

'Cooling-off period'

The cooling-off provision remains at 12 months but applies to all public officials and relates specifically to the portfolio area in which they previously worked.

'Dual hatting'

Public officials are restricted 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) for a period of 12 months after being elected[2].

This does not apply to general advice outside an election period, volunteering on an election campaign or general communications advice.

Political donations

When lobbyists register with the Commission, and annually when confirming that their details are up to date, they are to indicate whether they have donated to a public official or Tasmanian-registered political party in the previous 12 months above the threshold as per the relevant legislation.

[2] This only applies to certain categories of 'public officials', i.e., elected representatives who they have advised. It does not apply to Ministerial or political advisers, or to Heads of Agencies.

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 review
- 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 officials' and jurisdictions in QLD (Crime and Corruption Commission, CCC), and NSW (Independent Crime and Corruption Commission, ICAC).

The proposed model as set out in this report should be read and understood in conjunction with our research, consultation, and overview papers.

3.1. 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
- requires a statutory declaration that lobbyists 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.

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 Government representatives is to ensure they are not 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

It is important for lobbyists, public officials, regulatory authorities, and the public, to understand the difference between lobbying and consultation, and between lobbying and normal political activities. It is beneficial for the definitions in Tasmania's system to be as consistent as possible with other Australian jurisdictions, so lobbyists working across State boundaries meet the same threshold for being considered a lobbyist irrespective of where they operate.

Different definitions serve different purposes.

- 'Lobbying activities' must be defined if public officials are to record efforts to influence decisions on a contact disclosure log.
- 'Registered lobbyist' must be defined for the purpose of maintaining a public Register of lobbyists, their clients and employers (the latter in the case of in-house lobbyists).
- 'Public official' must be defined to identify who may be targeted by lobbying efforts, and therefore subject to regulation in their conduct and disclosures relating to lobbying activity.

'Lobbying activities'

Lobbying activities must be clearly defined so that public officials understand when they are being lobbied, and for the purpose of triggering regulatory requirements, such as disclosure of contact falling within 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, or
- 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. The Independent Broad-based Anti-corruption Commission (IBAC) Victoria recently observed[3] 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.

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 the work of a public official. Given that the goal of defining 'lobbying activities' is to build a new disclosure system, this 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 proposed model defines 'lobbying activities' as:

Communications with 'public officials', in which a person or entity seeks to advocate for or represent an interest, prior to a decision regarding:

- making or amendment of legislation
- development or amendment of a government or non-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.

Exemptions from Lobbying activities

Mirroring and building on practice in Ireland, the Commission proposes the following exemptions from the definition of 'lobbying activities':

- communication occurring in the normal functioning of government operations, limited to communications between colleagues, staff, or other public officials
- communication by or on behalf of an individual or group of individuals about personal or family matters
- communications that are already transparent by nature such as in public forums
- communications that are a normal part of the democratic process, such as contact with constituents, or constituents seeking advice or assistance from their local member
- activities which are already public such as submissions made in response to public consultation processes or presentations made to public hearings or committees
- communications in response to a request for tender

[3] 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.

- matters raised as part of Government briefings of either House of Parliament including a committee, and
- unsolicited correspondence that does not relate to a current or particular policy issue, for example, peak bodies sharing their budget submissions.

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 officials, nor discourage access to public officials by the community.

'Lobbyist' and 'registered lobbyist'

Qualifying as a 'registered lobbyist' determines who should be required to register publicly, and therefore be bound by the Code of Conduct. 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 officials in determining when they are being lobbied, and whether they can meet with the lobbyist.

Under the proposed model 'Lobbyist' is to be defined as:

- 'a person or organisation undertaking lobbying activities'.

- The model provides for complementary disclosure mechanisms such as a publicly available Contact disclosure log to be completed by public officials, and provides that:
- 'Lobbying activities' are disclosed by public officials, regardless of whether the person undertaking 'lobbying activities' is a registered lobbyist
- 'Registered lobbyists' are defined as a threshold for inclusion on the Register.

A 'registered lobbyist', for the purposes of triggering the threshold for inclusion on the Register of Lobbyists, is to be defined as:

- any person or entity (including its employees) who is paid to conduct lobbying activities on behalf of a third-party client (i.e., 'third party lobbyist')
- any person whose role is substantially to conduct lobbying activities on behalf of a corporation or entity, either as an employee or contractor (i.e., 'in-house' lobbyist).

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 earlier. 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[4] imposes broader standards of behaviour for lobbyists than the current Tasmanian code. The Commission's proposed model sets out the following obligations in the code of conduct for lobbyists:

- act in good faith and avoid conduct likely to bring discredit upon themselves, a public official, their employer or client
- take steps to ensure that the public official they have lobbied does not rely on inaccurate information
- indicate to their client their obligations under legislation and the Lobbying Code of Conduct
- not divulge confidential information unless they have obtained the informed consent of their client, or disclosure is required by law
- not represent conflicting or competing interests without the informed consent of those whose interests are involved
- inform a public official of any conflict of interest
- not place a public official in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on them.

'Public official'

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 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 members 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 members and their senior staff. Some submissions supported the definition being expanded to all public officers (as defined under the *Integrity Commission Act*), 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 our ability to monitor for undue influence on decision making.

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

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 proposes that *'public official'* for the purpose of lobbying regulation be defined as:

- a Minister, Secretary to Cabinet, or a Parliamentary Secretary
- a member of Parliament in the House of Assembly
- a member of Parliament in the Legislative Council
- a person employed as a Ministerial or political adviser (however appointed), i.e., where the majority of the person's role is to provide political advice
- a head of agency appointed under the State Service Act 2000.

The implications of expanding the definition of public official 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 proposed model sets out standards in the Lobbying Code of Conduct that prescribe minimum standards for public officials in relation to interacting with lobbyists. These are more stringent than the general standards in the current code, and include:

- any contact which involves lobbying activities must be documented
- preferential treatment and/or access to particular individuals or groups must not be given
- informal lobbying representations must be accounted for in reporting requirements
- information that would produce unfair advantage must not be divulged, and
- any reasonably suspected breach by lobbyists of the Lobbying Code of Conduct must be reported to the Integrity Commission as soon as practicable.

4.2. Lobbyist register

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 or entity (including its employees) who is paid to conduct lobbying activities on behalf of a third-party client (i.e., 'third party lobbyist')
- any person whose role is substantially to conduct lobbying activities on behalf of a corporation or entity, either as an employee or contractor (i.e., 'in-house' lobbyist).

There is evidence that the information lobbyists must currently provide when they register as a lobbyist should 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 business 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 possible additional information to be required for the register of lobbyists, including business 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 to be completed by public officials (addressed in section 4.3), is also a significant step towards transparency that negates much of the need to expand the lobbyist register. This shifts the focus of transparency from 'lobbyists' as a category, towards 'lobbying activities'.

We recommend that the register include the following existing and expanded information:

- business registration details
- names and positions of persons employed, contracted, or engaged
- names of clients and client organisations
- contact details
- whether acting as a third-party lobbyist, or in-house lobbyist
- whether the lobbyist has worked as a public official (defined in section 2.1) in the previous 12 months, and to specify the role
- whether the lobbyist has been paid to advise a candidate on a Tasmanian election campaign in the previous 12 months, and
- whether the lobbyist has made a donation to a public official or Tasmanian-registered political party in the last 12 months above the relevant threshold set out in relevant legislation.

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.

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 public is unaware of the frequency, type, or topic of lobbying activities.

While publication of Ministerial diaries assists through identifying meetings that have occurred, they do not provide information on what was discussed or the outcome; this places Tasmania's lobbying transparency behind that of New South Wales, Queensland, and soon to be Victoria, and internationally (Scotland, Ireland, and Canada). Implementing requirements for disclosure of contact involving lobbying activity with public officials 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 official', publishing Ministerial diaries would not capture all public officials 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 information disclosed under the *Right to Information Act* - thus providing some transparency - the portal can be difficult to search for disclosures of any lobbying activities.

Therefore, an alternative mechanism of disclosure for contact with public officials 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 officials, which are published under their entity information in the public register.

Submissions to our consultation process were supportive of Contact disclosure logs kept by either/or lobbyists and public officials. Some jurisdictions require that both lobbyists and public officials 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 our jurisdiction to investigate misconduct being restricted to public officials, we recommend that Contact disclosure logs be kept, maintained, and published by public officials (as defined in Section 4.1).

We developed this proposal in line with the following principles:

- the administrative burden of disclosure should rest with the public officials 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 disclosure 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 disclosure log should be user-friendly, designed for use by busy public officials
- the Contact disclosure log should be public, and appear on an easily accessible and searchable database

- the Contact disclosure log should be balanced with the understandable need for privacy of public officials 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 proposed model requires public officials 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 official name and title
- if meeting or phone call, other public officials 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 decisions in relation to:
  - making or amendment of legislation
  - development or amendment of a government or non-government policy or program
  - awarding of a government 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.

We will maintain an electronic database on which public officials record 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, we will establish 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 officials we propose a simple text box and drop-down system for the Contact disclosure log, as follows:

- 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 system in conjunction with the Register of lobbyists will bring Tasmania's transparency in line with all 3 of the OECD's core disclosures for lobbying activities[5]: enabling identification of the interests represented; the objective of the lobbying activity; and the government institutions being lobbied. It will 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 officials 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

Gift giving between lobbyists and public officials

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 receipt of a gift, or thresholds at which they must decline a gift.

Although the extent of gift giving between lobbyists and public officials in Tasmania is unclear, practices of gift giving from lobbyists to public officials 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.

The proposed model set outs that:

- **Gift giving between lobbyists and public officials is banned**. Prior to accepting any gift or benefit - with the exception of small token gifts including diplomatic gifts - public officials must first check the lobbyist register, and if the provider of the gift is a registered lobbyist, they must not accept the gift. Public officials should not give gifts to any registered 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.

[5] https://www.oecd.org/corruption/ethics/Lobbying-Brochure.pdf

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; however, to maintain consistency with national standards, the proposed model will ban 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 and other public officials comprise a large share of third-party lobbyists due to the incentive for lobbying firms to increase their access to government. The issue with the 'revolving door' is that senior public officials have networks and knowledge that could grant the private companies for which they work, or on behalf of whom they lobby, an influence advantage. Cooling-off periods are intended to dilute public officials 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 government 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 proposed model provides that the cooling-off provision remain at the current period of 12 months, but should apply to all public officials under the expanded definition. In addition, they should only be precluded from lobbying in relation to the specific portfolio area in which they previously worked.

This acknowledges the specific context of Tasmania, where employment for former public officials is more difficult than federally and in other state jurisdictions. However, the proposed model provides that former public officials automatically register as lobbyists if they are engaged in any lobbying activities, and indicate the area of their former portfolio, or areas of responsibility. Former public officials are not to lobby on matters relating to their former portfolio for the designated period of 12 months. Additionally, as recommended in Section 3, current public officials should log all contact falling under the definition of 'lobbying activities', including contact with former public officials.

This 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 insight into the type and extent of lobbying by former public officials. We propose to complement this recommendation with additional restrictions on 'dual hatting' as set out below. This suite of reforms creates necessary separation in the relationship between public officials and lobbyists.

'Dual hatting'

The term '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 on which they previously provided advice. In a closer and more problematic practice, lobbyists may simultaneously provide political advice and lobby the individuals to whom 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 officials and lobbyists. At worst, dual hatting can encourage misconduct when it creates an indebtedness in public officials that could improperly influence decision making.

The Coaldrake report[6], presented to the Premier of Queensland in June 2022 included a highly critical analysis of dual hatting practices in the state. As a result of the report, 3 lobbyists were banned outright from contacting Cabinet, and the Premier called for uniform national lobbying laws, including restrictions on dual hatting practices by lobbyists. The report recommended 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 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[7].

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 officials to not accept lobbying from those who have advised their political campaigns.

Therefore, the proposed model is that:

- ▽ Public officials are restricted 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) for a period of 12 months after being elected. This does not apply to general advice outside an election period, volunteering on an election campaign or general communications advice.

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

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

Political donations

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

The Commission does not regulate 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 officials they lobby should be considered in broader political donation reform.

We propose more transparency in relation to political donations and lobbying activities through the Register of lobbyists:

- When lobbyists register with the Commission, and annually when confirming that their details are up to date, they are to indicate whether they have donated to a public official or Tasmanian-registered political party in the previous 12 months above the threshold as per the relevant legislation.

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 is potentially deter dealt with through disclosure of donations.

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 *Integrity Commission 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.

[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

These are the only legislative provisions in Tasmania for administering the lobbying regime. Currently, 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 Chief Executive Officer after being notified they will be removed and given an opportunity to respond.

Unlike other jurisdictions, the Commission will have responsibility for both administering and monitoring the lobbyist register and proposed contact disclosure log.

For public officials, failure to abide by the Lobbying Code of Conduct is potentially misconduct under the Integrity Commission Act.

For registered lobbyists, non-compliance with the Code can cause the lobbyists to be deregistered. We do not need an amendment of the Act to monitor and deal with non-compliances of lobbyists.

We acknowledge that while it is important to have penalties for non-compliance, it is more advantageous to have lobbyists and public officials comply with the legislation voluntarily, through advocacy and education.

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.

We propose that the function and effectiveness of the new lobbying and oversight regime be reviewed after 2 years. The review would examine whether the regime is achieving its objectives of guiding ethical conduct by public officials, enhancing fairness and transparency in government decision-making, and improving public confidence in government decisions.

4.7. Resourcing a reformed lobbying oversight system

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

Compliance officers will be needed to perform audits of the register and cross check with the contact disclosure logs. Investigating misconduct relating to undisclosed lobbying of public officials 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 officials, given the goal is compliance for the purpose of transparency and public trust. Effective communication and education with the public sector, lobbyists and the public will be more effective than catching non-compliance 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, efficient, and meets the expectations of the community.

The proposed model has been guided by the principles of transparency, accountability, and the enhancement of public trust in government. The elements of the model have been developed for the purposes of guiding ethical conduct by public officials and improving the fairness, transparency and quality of government decision making.

We have considered and recommended expanding the definition of lobbying activities, lobbyists, and public officials. 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 propose an entirely new and important transparency measure, through disclosure of contact involving lobbying activity, maintained by the Commission, and completed by public officials. This complements the information provided on the Register of lobbyists and brings Tasmania in line with good practice in other jurisdictions in Australia.

We propose bans on practices that undermine public faith in the system, such as gift giving between lobbyists and public officials, and success fees paid by clients to lobbyists for achieving particular outcomes.

Finally, we increase measures to separate lobbyists' political and professional past and lobbying activities, through transparency measures and restrictions 'dual hatting', and political donations.

The proposed model will require further consideration and consultation to achieve buy-in from those affected. The Code of Conduct, Register of Lobbyists, and Contact Disclosure Log will need to be revised and established to reflect approach.

As noted in the Introduction to this report, it is in the interests of public officials and lobbyists alike that the public is reassured decisions are being made without secret or improper influence. Implementing the proposed model will be a significant transparency measure and enhance confidence in government decision making in the public interest.