MEG WEBB MLC
Independent Member for Nelson

Mr Michael Easton
Chief Executive Officer
Tasmanian Integrity Commission

Via email: contact@integrity.tas.gov.au

25 July 2023

Dear Mr Easton,

Re: Response to the *Framework Report: Proposed Model for Reform of Lobbying Oversight in Tasmania*.

Thank you for the opportunity to comment on the proposed model for reforming lobbying oversight in Tasmania.

I wish to take this opportunity to thank you and your team for the thorough, detailed and consultative process the Integrity Commission has undertaken in the course of this project to reform Tasmania's lobbying oversight regime.

To some extent this process has already furthered the educative aspect of the project due to the continual invitation to stakeholders and individuals from the community to be involved in each stage of the Proposed Model's development. I'm sure I reflect the experience of many who engaged with this process, that by undertaking the research and discussions in order to contribute meaningfully to the proposed lobbying oversight model for our state, we have in the process become more knowledgeable and informed on specific challenges, opportunities and successful examples of models implemented elsewhere.

It is in that spirit that I provide the following feedback on the Framework Report, specifically the matters detailed in the Report's *Section 4: Areas for reform and current recommendations*.

It is heartening to see the progression in the strengthened proposed transparency measures in some key instances such as definitions of 'public officials' and lobbyists, while striking a balance with legitimate political discourse.

However, there remain other areas which could still be strengthened further, without risking that legitimate political discourse balance.

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Following a quick summary of those measures which I think the Integrity Commission has refined to a strong and workable position, this feedback will then focus on other key components of the proposed framework with which I am either seeking further clarification, or believe still require strengthening in order for the eventual Lobbying Oversight Framework to deliver effectively on the following stated goals:

- Guide ethical conduct by public officials;
- Enhance fairness and transparency in government decision-making; and
- Improve the quality of government decision-making.

Numbering of each element of the proposed model discussed below reflects the numbering as presented in the Framework Report.

Welcome Elements of the Proposed Model

Proposed definition of 'lobbying activities'

This submission supports the expansion of the 'lobbying activities' definition beyond just the narrow focus of 'influence' to also recognize the potential impact of lobbying entities representing an interest prior to a government decision.

However, it is worthwhile clarifying that in some cases a decision is actually a progressive process rather than a static one-off occurrence, and which could provide more than one 'entry point' for lobbyists continuing to represent an interest. For example, lobbying activities may occur with certain public officials prior to a policy decision, or agreement to introduce legislation. Following a decision at that stage, then the legislation will need to progress through a series of votes in both Chambers of Parliament, providing the opportunity for potential ongoing lobbying efforts across a range of public officials with the intent of securing the desired vote outcome.

This consideration of ongoing rather than static contact during the course of either internal lobbying efforts resulting in an indicative outcome, and/or public debate finalizing a policy or government position, is pertinent when considering the range of contact which may need to be captured under "prior to a decision".

Proposed exemptions from lobbying activities

The proposed exemptions from the defined lobbying activities reflect the stated balance between providing meaningful transparency and legitimate political discourse. No further comment.

'Lobbying Code of Conduct'

In the main, the proposed model's Code of Conduct strengthens the current Code.

However, it is a questionable assumption that any potential breaches may only occur due to lobbyists rather than those lobbied – particularly given the proposed model's reliance on public officials completing the required disclosures logs.

This submission urges the final Code of Conduct principle be amended to include *"any reasonably suspected breach by lobbyists or public officials of the Lobbying Code of Conduct must be reported to the Integrity Commission as soon as practicable".*

4.2 Lobbyist Register

The move to include more meaningful information in the Lobbyist Register is welcome and supported.

However, details relating to disclosure of matters pertaining to the separation of political and lobbying activities will be examined further in the below discussion on the Framework Report's *section 4.5*.

4.4 Gifts and Success fees

The Framework Report's proposal to ban both gift-giving between lobbyists and public officials, and the payment of success fees are both welcome and supported.

Political donations disclosure

The Framework Report's recommendation that registering lobbyists are to indicate whether they have donated to public officials or Tasmanian registered political parties within the past 12 months is supported. However, in doing so it is assumed such disclosure – to be meaningful – will include details of amount (if over specified donations disclosure threshold) and recipient of those disclosed donations. The latter detail should still be required to be disclosed, even if the amount donated is below any relevant legislated donations disclosure threshold.

Proposed Two-year Review of lobbying oversight reforms

The Framework Report's proposal to review the function and effectiveness of the new lobbying and oversight reforms two years following implementation is supported.

Areas Requiring Further Clarification

'Public official'

This submission supports the proposed expanded definition of 'public official' particularly the inclusion of non-government elected representatives. However, I would urge consideration of further expansion to include Deputy Heads of agencies, due to Heads of Agencies capacity to delegate as allowed for under s. 35 of the *State Services Act 2000*.

Further it is unclear why Heads of government agencies, including some state authority CEOs, are included but Government Business Enterprises' CEOs are not (as defined under Parts 1 and 2 of Schedule 1, *State Services Act 2000*). GBEs such as Sustainable Timbers Tasmania and Hydro Tasmania have been, and will continue to be, key players in policy development with considerable bearing on community engagement and the state's policy direction. GBEs are also in a position to award substantial grants and contracts.

Further, GBEs are included in the defined 'public authorities' under s. 5 of the *Integrity Commission Act 2009*, which provides a legal framework for the extent of the Commission's authority.

This submission urges the consideration of extending the definition of 'public official' to include both Deputy Heads of agencies as defined under the *State Services Act 2000*, and Government Business Enterprises in accordance with 'public authorities' as defined by the *Integrity Commission Act 2009*.

Elements of the Proposed Model Requiring Further Strengthening

4.3 Disclosure reform

At the outset it should be acknowledged that the proposed model does put forward strengthened disclosure requirements than those currently required.

However, it still falls disappointingly short in key areas, particularly in context of the eventual reformed Lobbyist Oversight regime's capacity to deliver the stated and intended principle of providing 'greater transparency and trust'.

In this context, this submission takes issue with some specific proposed required measures, and also the reasoning put forward in the Framework Report to justify the limitations on those measures instead of recommending more robust proposals.

Positive proposals which are supported include:

- ☑ that an electronic searchable contact disclosure log is maintained by the Commission; and
- ☑ the range of details proposed to be required in the contact disclosure logs, as a minimum. This component is discussed in further detail later in this response.

However, a weakness of the proposed model is the onus upon public officials ***only*** to maintain the contact disclosure logs, but not those undertaking the actual lobbying activity. This objection is based upon the following considerations:

- ☒ Inequity;
- ☒ The missed impetus to invest in a transparency and accountability culture via a cross-referencing mechanism;
- ☒ Weak justification not driven by a Public Interest Test.

Inequity

As a member of one group – non-government Members of Parliament - which will now fall within the expanded definition of a 'public official' for the purposes of the Lobbying Oversight system should the proposed model be adopted, I recognize I may be subject to these new contact disclosure log requirements. As one who advocated for that expanded definition I am happy to comply with the new requirements, noting however, that as an Independent Member of the Legislative Council with limited funding currently, that funding is highly unlikely to be increased in order to assist me in fulfilling any new Lobbyist Oversight requirements.

In contrast, it is arguable that many lobbyists, particularly those engaged to lobby on behalf of a client, will be in a position to absorb administrative compliance related costs via their business models and arrangements in a manner that is not available to public officials. I.e. MPs cannot, and nor should we, charge those on whose behalf we are working, the public, to mitigate time taken and any additional costs incurred, to comply with these new requirements.

Fundamentally, it is a matter of principle that those in a position to benefit from lobbying activities – lobbyists and their clients - should bear a shared responsibility of disclosure, to contribute to developing and maintaining a culture of transparency and accountability

Further, it is arguable that the failure to require lobbyists to also share the 'administrative burden' of disclosure is disproportionate and at the expense of the public interest. It could be regarded as a form of public subsidisation of the lobbyist sector if only those who are publicly-funded have to maintain the disclosure logs.

Missed Benefit of cross-referencing

The capacity to cross-reference is a practical tool by which members of the public, as well as entities charged with maintaining the integrity of the oversight system, can exercise their right to be informed in a meaningful and transparent manner.

The capacity for the public and authorities to cross-reference contact disclosure logs provides a significant impetus for both lobbyists and any public officials lobbied to provide meaningful and sufficient detail.

This is demonstrated on an annual basis via the Australian Electoral Commission's political donations disclosures, where citizens are able to inspect details of reportable donations received as submitted by recipients as well as separate disclosures submitted by donors. (Note: my citing as a positive example the current AEC cross-referencing capacity, should not be misinterpreted as an endorsement of the current federal political donations disclosure threshold, which I consider extraordinarily high).

As mentioned by the Framework Report, there is precedent of other jurisdictions, such as Queensland, which do require both lobbyists and those lobbied to share the 'administrative burden' of submitting contact disclosure reports.

Weak justification not driven by a Public Interest Test.

There is very little rationale or substantive reasoning provided to support this lop-sided allocation of 'administrative burden' instead of both parties involved in lobbying – those lobbied and those lobbying – being required to share that transparency responsibility.

Rather than being solely evaluated on the basis of 'administrative burden' on those involved in lobbying activities, the decision should be based upon the application of a public interest lens. Rather than assess who should be responsible for maintaining the contact disclosure log on the basis of convenience or otherwise, the decision should be driven by the lens of what will reassure the community that all which should be disclosed has been disclosed?

A cross-referencing mechanism is one such effective method consistent with fostering ethical conduct, while enhancing fairness and transparency.

Such an approach would also be consistent with one of the Framework Report's stated goals of 'increased public trust'.

The main reason really proffered for this proposal appears to be the fact that under *the Integrity Commission Act 2009*, the Commission's jurisdiction to investigate misconduct is limited to public officials. This is despite the Act also providing for the Commission to: "*establish and maintain codes of conduct and registration systems to regulate contact between persons conducting lobbying activities and certain public officers."* [1]

Should there exist a tension between delivering a robust, equitable and effective lobbying oversight system, and provisions in the current Act, then an avenue which must be explored is to seek amendment of the Act to ensure that the Commission is empowered fully to fulfil its regulatory and oversight function of lobbying activities.

This submission urges that both lobbyists and public officials are required to maintain contact disclosure logs.

Contact disclosure log – proposed content to be detailed

The proposed elements detailed for the proposed text-box and drop-down system provide a basic and sound start.[2]

[1] *Integrity Commission Act 2009*, Section 8 Functions and powers of Integrity Commission, subsection 1 (e).

[2] Tasmanian Integrity Commission, 14 June 2023, *Framework Report: Model for Reform of Lobbying Oversight in Tasmania*: pg. 21.

However, the focus appears to be more on the *who*, *what*, and *when*, rather than the ***why***. Those interested members of the public don't just want to know who met who, but why they met. What was the topic(s) discussed and purpose of the meeting?

When comparing the proposed list provided in the Framework Report it is useful to also consider the 2022 Coaldrake Report's discussion on lobbyist regulation. Coaldrake (2022) refers to a NSW ICAC review which recommended the following should be disclosed:

- date and **location** where face-to-face lobbying communications took place
- the name and role of the government official(s) being lobbied
- a description of their lobbying communications
- a description of the **purpose and intended outcome** of their lobbying communications
- **whether lobbying was undertaken on behalf of another party**.[3]

Inclusion of location can be pertinent to providing context to the lobbying contact, for example, a meeting held in a venue associated with a hospitality lobbyist has different connotations than a meeting held in a public official's workplace.

Similarly, clarification on whose behalf the lobbying activity is occurring provides valid contextual information. There does not appear to be any good reason why this detail would be omitted.

The purpose and intended outcome of the lobbying activity is crucial for the rigour of the contact disclosure log. This may be the intent of the Framework Report's proposed requirement that the contact disclosure log include, "*the nature of the lobbying activity (drop down box/text box for other)*."[4]

However, the Coaldrake Report recommended that "***the drop-down menu be abandoned and supplemented with a field requiring a short description of the purpose and intended outcome of lobbying communications.*** *This should be supported by regular performance audits of its use by the Queensland Audit Office to establish whether the shield of confidentiality is needed*."[5]

The Coaldrake Report followed, and referenced, the 2021 Queensland *Strategic Review of the Integrity Commissioner's Functions* undertaken by Independent Reviewer Kevin Yearbury. The Yearbury Report found that lobbyists tended to overuse the 'other' drop-down menu option, and recommended that: *"to improve transparency in relation to the nature of contacts with government representatives and Opposition representatives, lobbyists be required, when entering details on the Lobbyist Register, to provide a short explanation of the subject matter when selecting the 'other' category."*[6]

This submission recommends that while drop-down box options for factual details such as date are appropriate, the purpose and intended outcomes of the lobbying contact must be detailed via a written description.

A further recommendation is for the Commission to audit the Contact disclosure log on a regular basis (and publicly report on audit findings), during which any meeting notes recorded are to be evaluated against the disclosed 'purpose and intended outcomes' for consistency.

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[3] Coaldrake P, 28 June 2022, *Let the Sunshine In: Review of culture and accountability in the Queensland public sector*, Final Report: pg. 53.

[4] Tasmanian Integrity Commission, 14 June 2023: pg. 21

[5] Coaldrake P, 28 June 2022: pg. 53.

[6] Yearbury K, 30 September 2021, *Strategic Review of the Integrity Commissioner's Functions*: pg. 11.

Contact disclosure log – timeframe for disclosure

The Framework Report proposes the Contact disclosure log is to be updated within five days of a lobbying contact.[7] I acknowledge five days provides a relatively timely turn-around period. However, in the knowledge that a considerable amount of lobbying activity centres on legislative reforms, any such activity should be disclosed in time to assist informing any parliamentary debate on any related legislation, or other related parliamentary debates.

Under parliamentary standing orders, a Bill can be tabled on a Tuesday, and be mature for debate by the Thursday of that same sitting week, meaning that any relevant lobbying disclosures could be released following debate of a Bill which had been the subject of lobbying contact(s).

Further, any specified timeframe should detail whether it is five calendar days or five working days.

This submission recommends that the Contact disclosure log should be updated within three working days of a lobbying activity.

4.5 Separation between lobbyists' political and lobbying activities

The Framework Report provides a commendable, clear and strong analysis of the need for cooling-off periods before former public officials can then engage in lobbying activities, and the need to tackle the practice of 'dual hatting'.

The only point of contention is the proposed 12 month period for both the cooling off periods and the period in which public officials cannot be involved in lobbying activities with lobbyists who had provided political advice during the most recent election campaign.

In light of other jurisdictions' examples, such as the five year cooling off period mandated in Canada, the reasoning behind the much-less rigorous 12-month recommendation does not appear substantial nor evidence based.

Instead, there is a reliance upon 'Tasmanian exceptionalism' as a justification to have less rigorous oversight requirements than those applied in other jurisdictions.

This submission urges caution on the emphasis upon 'Tasmanian exceptionalism' as the basis for justifying less 'onerous compliance' requirements.

It must be acknowledged that many lobbyists, including those currently registered on the Tasmanian Lobbyist Register, are either not based in Tasmania themselves or are representing other third parties who are not based within Tasmania. Therefore, presumably, the perceived limitations of operating in a 'small' population are mitigated either by access to interstate sourced funding or other resourcing.

Further, it is broadly recognised that it is within smaller and enclosed communities – which, to some degree, an island state with the geographic and population size of Tasmania could be considered to be – where nepotism and cronyism can be rife, and which can have a more disproportionate impact, and run the risk of becoming normalised at a cultural level.

Without intending to cast aspersions, it is not uncommon within Tasmania to hear casual conversations discussing employment or funding success peppered with statements such as *"oh, well they are part of the old-boys school clique…*", or "*they are related to so-and-so who is now married to so-and–so…"* inferring that such developments were influenced in some inequitable and beneficial manner by those local networks and connections.

[7] Tasmanian Integrity Commission, 14 June 2023: pg 20.

Rightly or wrongly, part of the 'Tasmanian exceptionalism' is a cultural tendency to apply automatically family, education, or geopolitical assessment filters across individual or entities involvement in business, political and social activities. That in turn reflects either the actuality, and/or the perception that such local networks have influenced individuals or entities' capacity to 'get ahead' in some way.

Hence stringent oversight to manage real or perceived conflicts of interest, impropriety, nepotism, cronyism and vested interests is just as crucial in small communities as it is in larger populations.

Paid access

It is unclear why the Commission determined that paid access – such as attending dinners or functions – should not be considered a lobbying activity, but instead could be better dealt with under donations disclosure requirements.

On one hand it could create potential confusion within the proposed model given the recommendation that lobbyists do declare whether they have made a donation to a public official or registered political party when registering with the Commission – lobbyists may not realise that although they do not have to declare 'paid access' functions as a lobbying activity, they should declare it as a donation as part of their responsibility to maintain a current Lobbyist Registration.

Further, it is arguable that should lobbyists attend a paid access function, and claim that attendance as a potential work-related tax deduction, then it should also be recognized as lobbying activity.

General Comments

Compliance and enforcement

To come anywhere close to achieving the goal of restoring and maintaining public trust and confidence in the integrity of our governance system, the community has to have active reassurance that the new lobbying oversight regime is not hands off but has teeth.

A whiff of corner-cutting or loop-hole exploitation will undermine any credibility or goodwill.

Noting the Framework Report flags the potential for non-compliance by a lobbyist could result in deregistering, if progressed that proposal should also specify a minimum period of time before that lobbyist can reapply for registration, for example, only after five years has elapsed since deregistration.

Fines are another potential penalty for non-compliance. There may be scope to harmonise non-compliance penalties with the proposed state-based electoral donations disclosure laws should they pass the parliament.

While acknowledging the Framework Report's preference for a cooperative approach when working with those involved in lobbying activities, that needs to be balanced with, and driven by, what the Tasmanian community needs. Public trust will not be enhanced, but eroded should there be a perception that there is too much carrot and too little stick.

The challenge facing the new lobbying oversight system is to strike the balance of sufficient carrot and sufficient stick just as transparently and accountably as the new regime purports to require from those it seeks to regulate.

Ministerial Diaries

The Framework Report provides a brief discussion regarding the role of the periodic disclosure of Ministerial Diaries, explaining why that particular transparency and accountability mechanism is not

included as a part of the proposed lobbying oversight regime, despite the Commission being in general support of the measure. The reasoning provided is understandable, however I wish to take this opportunity to clarify that the added purpose of regular disclosure of Ministerial diaries, as opposed to all public officials' diaries, is that this measure provides an additional transparency focus upon the Executive of the day. As the prime decision-making body on behalf of the Crown, and the Tasmanian public, this specific additional scrutiny measure upon the Executive is warranted.

In this context, a rigorous and robust lobbying oversight system and regular disclosure of Ministerial diaries are complementary transparency tools and were not suggested as an either/or option.

Hence, while I acknowledge the Commission's reasoning to leave Ministerial Diary disclosures outside of, and separate to, the proposed lobbying oversight system, it does remain a concern that this particular disclosure mechanism is currently at the whim of the government of the day, rather than being protected as an ongoing requirement via some form of regulatory codification.

Commission Requires Secure and Adequate Resourcing

While outside the Commission's immediate responsibility, I concur with, and support, the Framework Report's caveat that the Commission will require proper and adequate levels of funding to ensure the effective "*implementation, monitoring, education and ongoing review*" of the new lobbying oversight system.[8]

To provide that guarantee it should be recommended that as a statutory independent entity, the annual funding allocation to the Tasmanian Integrity Commission be reserved by law. This would facilitate community confidence in continuity, as well as internal capacity building and consistent program delivery in accordance with the Commission's legislated responsibilities.

Lastly, while understanding that the tier of local government was not included in the original terms of reference provided to the Commission, for the purposes of maintaining a consistent and comprehensive position this submission reiterates the need for the eventual inclusion of that tier within the state's lobbying oversight regime.

Once again, I appreciate this opportunity to contribute further on the development of the important proposed model for reforming lobbying oversight in Tasmania.

Yours sincerely,

Meg Webb MLC

Independent Member for Nelson

[8] Tasmanian Integrity Commission, 14 June 2023: pg. 4.