



Tasmanian Council of Social Service Inc.

Reforming Oversight of Lobbying in Tasmania

June 2022



**INTEGRITY
COMPASSION
INFLUENCE**

About TasCOSS

TasCOSS's vision is for one Tasmania, free of poverty and inequality where everyone has the same opportunity. Our mission is two-fold: to act as the peak body for the community services industry in Tasmania; and to challenge and change the systems, attitudes and behaviours that create poverty, inequality and exclusion.

Our membership includes individuals and organisations active in the provision of community services to Tasmanians on low incomes or living in vulnerable circumstances. TasCOSS represents the interests of our members and their service users to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

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Introduction

TasCOSS welcomes the opportunity to make a submission to the Tasmanian Integrity Commission ('the TIC') in relation to its current inquiry in relation to lobbying oversight in Tasmania. As per the consultation paper released by the TIC ('the Consultation Paper'), the objective of the inquiry is to identify current issues with lobbying and how it is managed in Tasmania, as well as explore opportunities for strengthening existing laws and systems.

Background

Lobbying is a term used to describe communications with public officials, including Parliamentarians and government decision-makers, to influence their choices or opinions on certain issues. According to the Human Rights Law Centre, '[l]obbying is not only legitimate, it is essential to the proper functioning of a democracy',¹ as it provides opportunities for constituents 'to be heard by their elected representatives and consultation leads to better decisions.'² Lobbying presents an important opportunity for interest groups, who may have specialist knowledge and first-hand experience in particular areas, to speak directly to politicians and potentially influence their decision-making in Parliament. It has been described as 'a necessary component of representative democracy'.³

However, lobbying can also raise concerns about how governments can be influenced by powerful voices or interest groups. As noted by the Organisation for Economic Co-Operation and Development, '*lobbying can also lead to undue influence, unfair competition and regulatory capture to the detriment of the public interest and effective public policies*',⁴ leading many international jurisdictions to implement frameworks to regulate lobbying activities. These concerns have been echoed in Australia. The current Australian system has been described as 'a highly uneven playing field where the odds are stacked against the interests of ordinary people and communities... leading to significant inequity'.⁵

A lack of transparency around government decision-making undermines community trust in outcomes and the political process. Stronger regulations would increase accountability by providing greater certainty around who is meeting with politicians, and for what purpose. TasCOSS believes more robust regulations relating to lobbying and related activities could have a significant impact on public confidence in government decisions and procedures.

The need for lobbying reform in Tasmania, as well as other Australian jurisdictions, has been highlighted in a number of academic reports, as well as media articles. Some of the issues identified with existing lobbying regulations in Australia include the following:

¹ Alice Drury, Human Rights Law Centre, *Selling Out: How powerful industries corrupt our democracy* (Report, 2022), 13.

² Ibid.

³ George Rennie, 'Australia's lobbying laws are inadequate, but other countries are getting it right', The Conversation (21 June 2017) <https://theconversation.com/australias-lobbying-laws-are-inadequate-but-other-countries-are-getting-it-right-78550>.

⁴ Organisation for Economic Co-Operation and Development, *Transparency and Integrity in Lobbying* (2013), accessed at <https://www.oecd.org/corruption/ethics/Lobbying-Brochure.pdf>.

⁵ Alice Drury, Human Rights Law Centre, *Selling Out: How powerful industries corrupt our democracy* (Report, 2022), 13.

- A lack of transparency around who is meeting with politicians, and what is discussed in those meetings;
- A lack of meaningful oversight of existing lobbying regulations;
- The ‘revolving door’ phenomenon, in which politicians with powerful connections take up positions as lobbyists after leaving politics, and use knowledge gained in the service of the community to benefit their clients;
- Issues with related legislation – for example, political donation laws – which impact our electoral system as a whole; and
- A culture of secrecy around the involvement and influence of large corporate interests in Government decision making, which in turn fuels public distrust in the political process.

This submission includes a brief overview of existing laws and regulations in relation to lobbying, as well as the following key changes we believe are needed to improve the culture and regulations around lobbying in Tasmania:

- The need for a comprehensive investigation into lobbying, with publicly published results;
- Regulatory reform relating to lobbying, as well as related issues (such as electoral donations); and
- Strengthening the oversight capacity of the Tasmanian Integrity Commission (‘TIC’).

Existing framework of regulation of lobbying activity

As outlined in the Consultation Paper, lobbying is currently regulated in Tasmania by the Department of Premier and Cabinet, with this authority scheduled to be transferred to the TIC as of 1 July 2022.

Tasmania has a Lobbying Code of Conduct, which outlines rules for lobbying in Tasmania and includes definitions to clarify these rules; for example, ‘government representative’ is defined to mean, ‘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.’⁶

There is also a publicly available Register of Lobbyists,⁷ which is governed by the Lobbying Code of Conduct and soon to be governed by the TIC. As outlined in the Consultation Paper, the current framework is an administrative model which ‘aims to encourage voluntary compliance by people who are lobbied’.⁸ It requires the registration of lobbyists who meet with government representatives on behalf of clients, and prohibits meetings or communications between government representatives and unregistered lobbyists. The Consultation Paper also notes that most government representatives are also subject to other regulations relating to workplace conduct, ‘such as the State Service Code of

⁶ Department of Premier and Cabinet, Tasmanian Government Lobbying Code of Conduct, 3.

⁷ See Department of Premier and Cabinet, Register of Lobbyists, accessed at https://lobbyists.dpac.tas.gov.au/lobbyist_register.

⁸ Integrity Commission, *Reforming Oversight of Lobbying in Tasmania* (May 2022), 3-4.

Conduct, which requires them to behave honestly and with integrity in the course of State Service employment’.⁹

Key Issues

Comprehensive investigation of the current state of lobbying in Tasmania

Although the Consultation Paper provides a brief overview of current lobbying activities and regulations, it acknowledges that lobbying is ‘often conducted in private, with little or no public accountability for meetings or issues discussed’, which can ‘create perceptions of decisions being made to serve particular interests rather than the public interest.’¹⁰

TasCOSS believes that the secrecy and current lack of transparency around lobbying in Tasmania make it difficult to ascertain the extent and nature of problems or tensions with existing practices or frameworks. Without more detailed information about exactly who is meeting with government representatives, and how these meetings may be influencing government decision-making, it is difficult to engage in meaningful discussions around how law reform could improve our current system.

We believe a comprehensive investigation into the current state of lobbying in Tasmania is needed, as well as a thorough review of existing national and international schemes which could be adopted in our jurisdiction. We understand the current review is an opportunity for feedback to be provided to the TIC (including experience of lobbying and its impact), however we are concerned the current consultation will not provide the TIC with sufficient information to properly examine the state of lobbying in Tasmania, without which the key strategies for reform are unlikely to be identified.

TasCOSS encourages the TIC to engage in further research and consultation into lobbying in Tasmania to more accurately assess what reforms are needed and identify the structures or models which are most likely to address existing issues with regulation, legislation and culture in Tasmania.

Regulatory reform

Given the lack of transparency around existing lobbying regulations in Tasmania, TasCOSS believes proposals for reform should focus on measures that increase transparency in relation to government communications.

The following is a non-exhaustive list of issues which should be considered as part of any law reform proposal for the regulation of lobbying in Tasmania:

- ***Broader definitions of those who may be lobbied***

The current Lobbying Code of Conduct relates to the lobbying of ‘government representatives’, 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

⁹ Integrity Commission, *Reforming Oversight of Lobbying in Tasmania* (May 2022), 5.

¹⁰ Ibid, 3.

Ministerial adviser, or a Head of Agency appointed under the State Service Act 2000.

The Consultation Paper also notes there is considerable difference between Australian jurisdictions as to which public officers are captured by existing regulations, but that the Commonwealth and all other states have a broader definition than Tasmania, with definitions including ministers and parliamentary secretaries.

TasCOSS supports a broader definition of ‘government representative’ to more accurately capture communications and meetings which are occurring between lobbyists and government officials. We recommend a definition which, at minimum, includes all members of Parliament, senior members of staff, and senior member of parties (for example, the Director of the Australian Labor Party). We also recommend a definition which includes councillors, aldermen and elected local government members, to ensure the definition also captures decision-making at the local government level.

- **Disclosure requirements**

TasCOSS supports provisions which provide the public an opportunity to access information, provided in a timely manner, about meetings and communications being held between government representatives (using the wide definition of ‘government representative’ outlined above) and organisations, groups and individuals who may have a vested interest in a particular political outcome.

As noted above, Tasmania has a Register of Lobbyists. However, this registration only captures the activities of commercial lobbyists (lobbyists who are employed by an external organisation or third-party) and does not apply to in-house lobbyists (people who make representations to government, including lobbying activity, on behalf of their employer). The Register of Lobbyists also does not include any disclosure requirements.

TasCOSS supports the introduction of disclosure requirements for both commercial and in-house lobbyists. Provisions should allow for the publication of details about meetings between government and lobbyists, in a format which is accessible and easy to understand. Information should be kept and published not only relating to face-to-face meetings, but also to phone calls, emails and/or messages. In relation to what details should be included, TasCOSS recommends the TIC explore existing provisions in other Australian jurisdictions – for example, in Queensland, the Lobbyists Code of Conduct¹¹ requires lobbyists to enter details of their contacts with government and opposition representative into a website, which is publicly available.¹² The information must include the date of their meeting, the title and name of the representative, the name of the lobbyist entity, name of the client and purpose of the meeting. Reports have highlighted the need for disclosures to cover contact not only with third-party lobbyists, but also in-house lobbyists.¹³

As well as strengthening the disclosure requirements for all lobbyists, TasCOSS also strongly believes the TIC should implement a model placing greater responsibilities of information recording and reporting on the government. We note such an approach would be consistent with developments in other Australian

¹¹ Integrity Act 2009 (Qld), s 68.

¹² See Queensland Integrity Commission, Accessing the Register, accessed at <https://lobbyists.integrity.qld.gov.au/who-is-on-the-register.aspx>.

¹³ Yee-Fui Ng, ‘Regulating Lobbying in Australia: Three Steps for Reform’, Australia and New Zealand School of Government (10 September 2021), <https://www.anzsog.edu.au/resource-library/news-media/opinion/regulating-lobbying-in-australia-three-steps-for-reform>.

jurisdictions relating to disclosures of government information generally – for example, the Australian Capital Territory has a publicly available website, Open Access Information,¹⁴ where members of the public can search for and access different categories of information, including regularly-published ministerial diaries, which can be released under the *Freedom of Information Act 2016*. We believe disclosure from both lobbyists and government representatives will greatly enhance the level of transparency and accountability and will ensure the public are aware of information is being shared and decisions are being made.

TasCOSS further notes the final report relating to the recent review of lobbying in NSW, ‘Investigation into the Regulation of Lobbying, Access and Influence in NSW’,¹⁵ identified that, ‘a robust lobbying regime must address the responsibilities and the conduct of both lobbyists and the public officials, who, as part of their duties, consider and determine the outcomes of lobbying proposals’.¹⁶ The recommendations from the report included the need for ‘detailed standards and obligations’ for government officials, including:¹⁷

a) a prohibition on undocumented or secret meetings and communications with lobbyists, which entails obligations to:

- i. document all communications with lobbyists, including those held away from government premises, apart from immaterial or ephemeral communications*
- ii. avoid discussing substantive matters with lobbyists in social settings*

b) an expectation that a public official makes all reasonable efforts to seek the views of all parties whose interests are likely to be affected by the adoption of a lobbying proposal

c) a prohibition on improper preferential treatment of a lobbyist on the basis of any existing or former relationship (for example, a conflict of interest situation)

d) that a public official should discourage lobbying representations relating to proposals in situations where there are formal assessment procedures in place for determining the merits of the proposal, and that these procedures (for example, those relating to development applications, tenders, grants and unsolicited proposals) offer a more suitable channel through which representations can be made

e) that a public official must not divulge information to lobbyists that would provide them with an unfair advantage over other interested parties, including other lobbyists

f) a requirement to report any reasonably suspected breach of the “Lobbying Code of Conduct” to the lobbying regulator.

TasCOSS strongly supports the incorporation of similar provisions into the regulatory framework for lobbying in Tasmania.

¹⁴ Australian Capital Territory Government, *Open Access Information*, accessed at <https://www.act.gov.au/open-access>.

¹⁵ Independent Commission Against Corruption, *Investigation into the Regulation of Lobbying, Access and Influence in NSW* (June 2021).

¹⁶ Ibid, 36.

¹⁷ Ibid, 11.

- **Success fees**

Success fees are fees given to lobbyists after successfully achieving the desired outcome, and are banned in other Australian jurisdictions. For example, in Victoria, regulation 7.4 of the Victorian Government Professional Lobbyist Code of Conduct states:

Persons on the Register of Lobbyists who receive success fees on or after 1 January 2014 shall be removed from the Register, subject to the discretion of the Public Sector Standards Commissioner.

Similar provisions exist in other Australian jurisdictions, such as s15 of the *Lobbying of Government Officials Act 2011 (NSW)*.

TasCOSS supports the introduction of similar provisions banning success fees in Tasmania.

- **The 'revolving door'**

TasCOSS notes that Australian human rights organisations have raised concerns about the 'revolving door' of politicians who transition from politics into positions as lobbyists,¹⁸ which the Consultation Paper recognises may compromise government integrity by influencing public officers through promises of employment, utilising contacts within government that others may not have, or using specialist knowledge and experience gained during their time in office. Without laws or regulations prohibiting transitions from government positions into lobbying roles, there are no safeguards to ensure former politicians are not using the knowledge and access from their prior employment, funded by the taxpayer and intended to benefit the community, to advance the interests of commercial organisations. The Human Rights Law Centre has also noted that, 'the revolving door has created its own elite class of the politically powerful and the incredibly rich... Over time, our Parliament has become less representative and further removed from the values and interests of voters.'¹⁹

We note human rights organisations in Australia have called for 'cooling off periods' to be mandated for government representatives.²⁰ TasCOSS strongly recommends the implementation of laws to prohibit politicians from taking up roles as either in-house or commercial lobbyists for five years following their role/s in government, using existing provisions in the Canadian legislation as an example.²¹

- **Related issues**

TasCOSS strongly believes that changes to lobbying regulations alone are unlikely to create meaningful change without also considering how these regulations interact with other laws and processes in Tasmania. We encourage the TIC to adopt a broad approach to the issue of lobbying and consider how regulations or laws could support potential other changes, such as electoral donation laws, a review of the Right to Information process and legislation, and general considerations about how the public can access government information. We make this recommendation in light of the recognised need for

¹⁸ Alice Drury, Human Rights Law Centre, *Selling Out: How powerful industries corrupt our democracy* (Report, 2022), 13.

¹⁹ Ibid.

²⁰ Ibid, 15 – the HRLC have recommended 'an enforceable, three year cooling off period for ministers and their staff'.

²¹ *Lobbying Act*, R.S.C. 1985 c 44, (4th Supp.) section 10.11.

greater transparency around government process, as well as strengthened accountability measures to ensure laws and regulations are being appropriately enforced.

Strong, independent oversight

The Consultation Paper confirms the current system regulating lobbying is an administrative model, ‘not prescribed in law’, which aims to ‘encourage voluntary compliance’. To strengthen the existing system, we support the introduction of legislative provisions to govern how lobbying is conducted and reported. Legislation in other Australian jurisdictions offer possible models: for example, lobbying provisions (including the Lobbyists Code of Conduct) are included as a part of the *Integrity Act 2009 (Qld)*, and New South Wales has a standalone act, the *Lobbying of Government Officials Act 2011 (NSW)*.

The responsibility for administering any lobbying-related regulatory framework, as well as monitoring the existing register and code of conduct, will soon be transferred to the TIC. Other jurisdictions, including NSW and Qld, have vested independent bodies with the responsibility of overseeing lobbying regulations. However, we note the recent inquiry into lobbying in NSW resulted in recommendations which included the appointment of a dedicated lobbying commissioner to allow for expanded functions, including overseeing the Lobbyists Register, engaging in greater oversight and investigation of government officials and a duty to prevent improper conduct.²² Given recent reports which have raised concerns relating to the capacity of the TIC to exercise its existing functions,²³ TasCOSS is concerned the TIC may not be able to develop, implement and then be responsible for the regulatory mechanisms we believe Tasmania needs.

In a recent paper, The Australia Institute outlined the narrow jurisdiction of the TIC when compared with other Australian jurisdictions. Although the National Integrity Committee have recommended that integrity bodies have ‘a broad jurisdiction to investigate conduct which could adversely affect the honest or impartial exercise of public administration’,²⁴ the TIC has limited jurisdiction and cannot investigate the conduct of third parties.²⁵ The Australia Institute notes that the TIC’s jurisdiction ‘is limited when compared to most other Australian integrity bodies, which can investigate any conduct of any person that could affect the impartial or honest exercise of public administration’,²⁶ and that ‘unlike other states’ integrity bodies, [the TIC] cannot investigate third parties – even third parties that are intrinsically linked with the political process, such as political parties.’²⁷ The Australia Institute have also raised concerns in relation to the funding of the TIC, which is significantly less than similar bodies in other jurisdictions.²⁸

²² Independent Commission Against Corruption, *Investigation into the Regulation of Lobbying, Access and Influence in NSW* (June 2021), 13.

²³ See, for example, Leanne Minshull, The Australia Institute, *Good government in Tasmania* (November 2020), accessed at <https://australiainstitute.org.au/report/good-government-in-tasmania>; Eloise Carr and Rachel Hay, The Australia Institute, *Still toothless: Jurisdictional, funding and secrecy issues in the Integrity Commission Tasmania* (March 2022), accessed at <https://australiainstitute.org.au/wp-content/uploads/2022/03/Still-Toothless-Integrity-Commission-Tasmania.pdf>.

²⁴ National Integrity Committee (2017) *Principles for designing a National Integrity Commission*, Accessed at <https://australiainstitute.org.au/report/principles-for-designing-a-national-integrity-commission/>, 2-8.

²⁵ Integrity Commission Act 2009 (Tas), s 4(1).

²⁶ Eloise Carr and Rachel Hay, The Australia Institute, *Still toothless: Jurisdictional, funding and secrecy issues in the Integrity Commission Tasmania* (March 2022), accessed at <https://australiainstitute.org.au/wp-content/uploads/2022/03/Still-Toothless-Integrity-Commission-Tasmania.pdf>, 10.

²⁷ Ibid.

²⁸ Ibid, 14-15.

To ensure the TIC is able to provide the regulatory oversight needed in relation to lobbying and government conduct, we recommend the following:

- Changes should be made to the jurisdiction and oversight of the TIC, to ensure the TIC can appropriately investigate, monitor and report on Government activities and decision-making
 - o This includes the potential investigation of any person who could adversely affect the honest or impartial exercise of public administration
- The TIC should be adequately funded to perform its role, with increased funding to perform the additional functions required to oversee and monitor lobbying activities in Tasmania
- Consideration should be given as to whether a dedicated lobbying commissioner should be appointed.

Recommendations

1. The TIC engage in further research and consultation into lobbying in Tasmania, the results of which should be published and publicly available
2. The definition of 'government representative' should be expanded to include, at minimum, all members of Parliament, senior members of staff, senior member of parties and local government members
3. Introduction of disclosure requirements for both in-house and commercial lobbyists
 - a. Details of meetings to be published and publicly available
 - b. Should relate to all communications
 - c. Must include the date of the meeting/communication, the title and name of the representative, the name of the lobbyist entity, name of the client and purpose of the meeting
4. Introduction of provisions requiring Government recording and reporting of communications and meetings with lobbyists
 - a. Should include provisions mandating the regular publication of government information, such as ministerial diaries
 - b. Information should be provided in a way that is easy for the public to access
5. Success fees should be banned
6. Introduction of provisions mandating a minimum five-year period before government representatives can be employed as a lobbyist
7. Consideration of additional law reform priorities (such as freedom of information and/or electoral donation reform)
8. Consideration of whether a separate lobbying commissioner role is needed
9. Strengthening of the TIC's oversight capacity (including broadening the scope of its jurisdiction and increased funding).