

[REDACTED]

30<sup>th</sup> June 2022

Mr Michael Easton  
Chief Executive Officer Integrity Commission Tasmania  
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Dear Michael

Thank you for the opportunity to provide a submission on behalf of [REDACTED] in relation to the Integrity Commission's reforming oversight of Lobbying in Tasmania. I have responded to the submission prompts contained in your consultation paper, and I hope the response is of some value in your deliberations.

### People who are lobbied (public officers)

Should all Members of Parliament be included?

- Members of the serving Government should be included.
- Some jurisdictions cover non-government members under their Codes. This does not appear to deliver benefits against the purpose of the Codes, rather could be seen as being politically motivated. Oppositions are not making decisions on behalf of the Government.

Should all State public servants and bureaucrats be included or only those most senior?

- It is mostly relevant to the Senior Executive Service within the public sector.
- It is also appropriate to include Ministerial office staff.

### Standards of conduct

What standards of behaviour or conduct should be included in a code of conduct? Should lobbyists be prohibited from giving gifts to people who are lobbied?

- The following is based on the Queensland Code and would be appropriate, whereas Lobbyists shall observe the following principles when engaging with government representatives:
    1. Lobbyists shall conduct their business to the highest professional and ethical standards, and in accordance with all relevant law and regulation with respect to lobbying.
    2. Lobbyists shall act with honesty, integrity and good faith and avoid conduct or practices likely to bring discredit upon themselves, government representatives, their employer or client.
    3. Lobbyists shall not engage in any conduct that is corrupt, dishonest, or illegal, or cause or threaten any detriment.
- [REDACTED]

4. Lobbyists shall use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided to parties whom they represent, the wider public, governments and agencies.
  5. If a material change in factual information that the lobbyist provided previously to a government representative causes the information to become inaccurate and the lobbyist believes the government representative may still be relying on the information, the lobbyist should provide accurate and updated information to the government representative, as far as is practicable.
  6. Lobbyists shall not knowingly make misleading, exaggerated, or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to institutions of government or to political parties or to persons in those institutions.
  7. Lobbyists shall keep strictly separate from their duties and activities as lobbyists any personal activity or involvement on behalf of a political party.
  8. Lobbyists shall indicate to their client their obligations under the Integrity Act, and their obligation to adhere to the Lobbyists Code of Conduct.
  9. Lobbyists shall not divulge confidential information unless they have obtained the informed consent of their client, or disclosure is required by law.
  10. Lobbyists shall not represent conflicting or competing interests without the informed consent of those whose interests are involved.
  11. Lobbyists shall advise government representatives that they have informed their clients of any actual, potential, or apparent conflict of interest, and obtained the informed consent of each client concerned before proceeding or continuing with the undertaking.
  12. Lobbyists shall not place government representatives in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on them.
  13. Lobbyists should inform themselves of the policies of the Government and local governments restricting the acceptance of gifts by officials.
- You may be interested to note that the [REDACTED] which overlays our corporate values in addition to the various Lobbying requirements of the jurisdictions.
  - In addition, there should be a requirement that lobbyist is not engaged by political parties (paid) for campaigning (as in the recent cases in Queensland). This has raised a serious ethical question. In such case the lobbyist and the lobbyist firm should be subject to a time restriction similar to a 'revolving door ban'. Note this has been addressed in the recently released [Coaldrake Report](#) in Queensland.

Should a lobbying code of conduct include standards of conduct for both lobbyists and people who are lobbied?

- Not necessarily for people who are being lobbied. The responsibilities of elected and government officials are covered in other legislation / regulation, however some jurisdictions do summarise the key areas of responsibility in the Code – making for a useful reference and providing clarity for all.
- The Coaldrake Report recommendations look to increased and more transparent record keeping for Ministers and ministerial officers when it comes to lobbying by in-house lobbyists, unions, and associations.

### What is included in lobbying activities

What activities, if any, should be exempt from the definition?

- Exempt from lobbying:
  1. Contact with a committee of Government.
  2. Contact with a member of Government, or a councillor, in his or her capacity as a local representative on a constituency matter.
  3. Contact in response to a call for submissions.
  4. Petitions or contact of a grassroots campaign nature in an attempt to influence a government policy or decision.
  5. Contact in response to a request for tender.
  6. Statements made in a public forum.
  7. Responses to requests by government representatives for information.
  8. Incidental meetings beyond the control of a government representative and lobbyist.
  9. Administrative functions such as basic correspondence and organising appointments.
  10. Contact on non-business issues, including, for example, issues not relating to a third party client of the lobbyist or the lobbyists' sector.
  11. Contact only for the purpose of making a statutory application.

Should registerable lobbying activity be triggered by one communication only?

- Again, the test is about the public's expectations. If that one communication related to a major decision, then it would be appropriate. On balance, however a single communication could be exempted.

What sort of contacts, communications or other actions should be included as lobbying activities?

- Contact with a government representative in an effort to influence State or local government decision-making, including the:
  1. Making or amendment of legislation; and
  2. Development or amendment of a government policy or program; and
  3. Awarding of a government contract or grant; and
  4. Allocation of funding; and
  5. Making of a decision about planning or giving of a development approval under the relevant planning acts.
- A contact should include telephone contact, email contact, written mail contact and face-to-face meetings.

### Who or what is a lobbyist

How should the term 'lobbyist' be defined?

- The stated motivation of the Lobbying Code of Conduct / legislation / regulation in all jurisdictions is to promote trust in the integrity of government officials, its processes and to ensure that contact between lobbyists and Government representatives is conducted in accordance with public expectations of transparency, integrity, and honesty.
- All jurisdictions cover 3<sup>rd</sup> party lobbyists in some manner, however exempt a wide range of people and organisations that undertake lobbying, thus creating a dual system – one part regulated and one part unregulated.
  - Lobbying undertaken by the major legal, accounting/advisory firms, project management firms, etc., hide behind the 'incidental lobbying' exemptions of various Codes, however they are highly active and benefit significantly from their lobbying efforts both for their firms and clients.
  - Lobbying by inhouse employees, and by industry / professional associations and unions is also significant.
- Lobbying undertaken by these bodies is significant and is much greater than that of registered lobbyists. A NSW report includes lobbying by these bodies amounts to around 75% of all lobbying. Anecdotaly, [REDACTED] believes this is an understatement of the amount of lobbying done by non-registered lobbyists.
- Notwithstanding many reviews and strong recommendations to expand the definition of lobbyists, no Australian jurisdiction has yet captured this broader group of lobbyists.

- The Coaldrake Report in Queensland has recommended that:
  - Professional firms that are currently able to hide under the exempt provisions should be required to register under the Lobbying Register and their lobbying actions be subject to the Lobbying Code.
  - In-house lobbying, and lobbying undertaken by unions and industry/professional associations be subject to increased requirements on Ministers and ministerial advisors for recording the lobbying contact and context within their diary entries, with those diaries being made public. There remains a question whether lobbying by these bodies will require adherence to the conduct provisions of the Codes.
  - If implemented, this will be the most rigorous, encompassing, and transparent regime in Australia.

Should the regulatory system include only third-party lobbyists or be extended to include in-house (employed within the company doing the lobbying) and other lobbyists?

- If the stated objectives of the Lobbying Code of Conduct are as above, then yes, other lobbyists should be included.
- The recommendations of the Coaldrake Report would provide a reasonable balance between the benefits of expanding the Code and increased transparency, with increased administrative workload of government and Ministers.

Is receiving payment or setting an expenditure limit an appropriate test for a lobbyist to be included?

- This depends on the culture Tasmania is hoping to develop for the sector. In some jurisdictions being on the lobbying register is seen as a negative – there is a negative culture towards the sector. In these jurisdictions, then yes – having the ability to exempt clients helps. If there is a positive culture towards the sector, such as currently in Tasmania and at the Commonwealth level, then it makes no difference. Most of these clients are pro-bono charitable organisations.

If in-house lobbyists are to be included, should percentage of time spent lobbying be an appropriate test for inclusion?

- The issue is not about time or being incidental. A business or professional firm might lobby for a major decision which may not take significant time or effort. However, the question is whether there is transparency around the decision which meets the public expectations of transparency, integrity and honesty. Again, the approach recommended by the Coaldrake Report might provide an appropriate balance, whereby in-house lobbyists are not registered, however there is greater transparency and context provided through Ministerial and advisor diaries.

If in-house lobbyists are to be included, should the number of employees in an entity be used as a qualification test?

- No.

## Disclosures and transparency

What information should lobbyists be required to provide when they register?

- Names of Directors
- Names of registered lobbyists
- Names of current and previous clients (the later could be time limited, eg: dropping off the list after 12 months)
- Any details about foreign ownership and/or foreign influence

What information should be disclosed on an online register?

- As above
- The disclosure regime in Queensland requires more detail than other jurisdictions. There is no evidence that the additional requirements in Queensland provide any better practice or integrity compared to other jurisdictions which have lesser requirements, including in Tasmania.

Should public officers disclose diaries or other information disclosing communications with lobbyists?

- Yes, however if such disclosure is made, then it should be made for all diaries entries and communications with people and/or organisation seeking to influence a Government decision.

If lobbyists and people who are lobbied are to make disclosures, how frequently should this happen?

- If there is to be a contact register, then within 10 working days – but again there is no evidence that these records improve the system.

Would disclosures be more likely or reliable if they were made by government representatives rather than lobbyists?

- No really. Everyone makes mistakes from time-to-time, but there is generally goodwill within the lobbying industry to comply with whatever arrangements are implemented.



## Compliance

Does Tasmania need specific legislation to empower the Integrity Commission to provide compliance measures?

- Queensland has an Integrity Act. Other jurisdictions variously rely on legislation, Codes, and existing powers. [REDACTED] operates across all jurisdictions, and from our experience no system provides a noticeably greater benefit or detriment to others – other than increased administration. That said, if the Coaldrake Report recommendations are implemented in Queensland then this will potentially shift integrity and transparency laws to the next level.

What, if any, sanctions should be included as part of a lobbying regulatory system?

- Sanctions that suspend or terminate the registration of a lobbyist and/or the lobbying company.

## Revolving door bans

Are bans on public officers moving into lobbying roles appropriate?

- The lobbying industry has accepted time period bans on moving into lobbying roles. Some firms overcome this ban by assigning work under the guise of 'stakeholder engagement'.
- No other industries face such restrictions. Engineering, project management, infrastructure firms etc, actively seek to attract public officers into employment / consulting roles with no restrictions in relation to using the knowledge, contacts and influence for the benefit of the new employer.

How long should the 'cooling off' period be before public officers can become lobbyists?

- A period of 12 months is reasonable. Some jurisdictions have a longer period for Ministers that advisors. The 24 months used in some jurisdictions is excessive.

Which public officers should be subject to cooling off periods?

- Senior officials (executive band in the public service), all politicians and advisory staff in political offices.

Lobbyist engaged by or on behalf of political parties

- In addition, there should be a requirement that lobbyist is not engaged by political parties (paid) or a third party on behalf of a political party for campaigning (as in the recent cases in Queensland). This has raised a serious ethical question. In such case the lobbyist and the lobbyist firm should be subject to a time restriction similar to a 'revolving door ban'. This matter is addressed in the Coaldrake Report.

## Success fees

Should receiving or paying success fees be prohibited?

- Success fees should not be banned for registered lobbyists.
- Other State jurisdictions prohibit success fees being paid to lobbyist. There is no evidence to suggest this is necessary, or that there was inappropriate behaviour prior to introduction in other jurisdictions.
- No other advisory firms are constrained in this manner, for example financiers, project managers, tender writers, legal firms, etc – some of which charge purely on a contingency basis. Many of these organisation actively lobby government and politicians however hide behind the exemption provisions of the various Codes of Conduct.
- Representatives of organisations that engage in inhouse lobbying are not banned from being paid for the success of their work. For example, external affairs personnel in the private sector can receive bonuses attached to winning government contracts / funding.
- Success fee bans are restrictive on firms that provide wider services to clients in addition to lobbying. For example, a tender writer who helps win a Government contract can take a success fee whereas a lobbying firm which helps a client write a tender cannot.
- It makes engaging a lobbying firm more expensive with up-front fees for clients, especially SMEs, as there is no opportunity to share the risk/reward of the engagement.

Should you wish to discuss any of the above comments further I would certainly welcome the opportunity.

Yours sincerely

