

Submission – Reforming lobbying oversight in Tasmania

We thank the Integrity Commission of Tasmania for this invitation to contribute to the inquiry into reforming lobbying oversight in Tasmania.

Our submission is focused on providing our view on how and why the current model should be significantly changed, as outlined in Section D (below).

We are recommending a transformative approach because the core problem of public trust is unlikely to be moved sufficiently by incremental changes. Also, any solution requires disintermediation and transparency: the existing approach cannot be simply updated to achieve these goals.

We recommend that Tasmania trial the use of a citizens’ panel through which lobbying is filtered, and that this initially apply to the narrow subset of issues that are least trusted by the public to be free of unethical influence.

Deliberative processes such as the Irish Constitutional Convention have built public trust in decision-making by substantively and visibly involving everyday people (chosen at random in a democratic lottery) in processes that tackle difficult trade-offs in a transparent and rigorous manner – and one that MPs find complementary as they ‘share the decision’ and allow them to be more trusted in their representative role.

The public’s distrust of politicians is a well-known phenomenon. This is often linked with the involvement of money in politics and the ‘revolving door’ of public-private relationships. *Lobbyists sit at the apex of these two themes.*

A model that filters lobbying through a panel of citizens selected by a democratic lottery would provide a mechanism that retains the informational benefits of lobbying while removing the negative incentives (need for campaign contributions) unavoidably faced by MPs. While direct contact between influential people will of course still occur, our argument is that the presence of an institution that always offers a public voice on a lobbied issue will act as an effective counterbalance.

Our courts provide a model here, based on the principle that not only must justice be done, but it must be seen to be done – and that evidence be presented in open court wherever possible. These same principles should be applied to lobbying for the exact same reasons.

Section A. Background on issues with lobbying

Lobbying adds expertise, knowledge and experience from industry, professional sectors, and civil society directly to our parliaments. However, the spectre of lobbying ‘behind closed doors’ significantly erodes trust and confidence in our democratic systems. The discussion paper correctly acknowledges the strong public perception that money and connections guide our public decisions. This *perception* must be fixed as much as the underlying issue.

While transparency is a key aspect of the lobbying system, it is clearly insufficient. Lobbyists also play a key role in encouraging political donations from clients to parties and this is assumed but hard to discover. Some lobbying firms are even led by people with fundraising responsibilities in a party, which should raise concerns.

Members of Parliament are dependent on campaign contributions to retain office. It is therefore essential that we maintain some disintermediation between those facilitating donations and those dependent on them.

Section B. Why consider a citizens' panel and deliberative democracy?

Across the globe, public authorities are increasingly using these representative deliberative processes to involve citizens more directly in solving some of the most pressing policy challenges. These processes give significant amounts of time and information to a group of randomly selected everyday people and facilitate their deliberation on an issue that leads to finding common ground on a set of recommendations.

Australia has been a pioneering, global leader in the development of this practice. OECD research¹ documents more than 48 examples of deliberative engagement practice here in Australia matched only by Germany (with the issues resolved often subject to regular lobbying). This suggests a national capacity to learn from experience and institutionalise these processes. The Victorian Government recently included mandatory deliberative engagement practice for local councils in its [Local Government Act 2020](#) (s55, g). The Western Australian Government's Local Government Act Review Panel also recommended in its [final report](#) the "mandate [of] deliberative community engagement in the preparation of both Community Strategies and Council Plans." (s37, d, iv).

[Evidence collected by the OECD](#)² and existing research in the field of deliberative democracy points to five key reasons why representative deliberative processes can help lead to better public decisions and enhance trust:

1. **Better policy outcomes because deliberation results in considered public judgements rather than off-the-cuff public opinions.** In a deliberation, citizens read, think and consider diverse, contested viewpoints – a function highly suited to considering lobbied positions. Deliberative processes create the spaces for learning, deliberation and the development of informed, common-ground recommendations, which are of greater use to policy and decision-makers than divergent contest alternatives. Consider that if a group of citizens were tasked with answering "What do all MPs need to know about Industry X and its regulation?" then what emerges would be more trusted than existing formats.
2. **Greater legitimacy to make hard choices.** These processes help policymakers to better understand public priorities, and the values and reasons behind them, and to identify where consensus is and is not feasible. Evidence suggests that they are particularly useful in situations where there is a need to overcome political deadlock or make difficult trade-off decisions.
3. **Enhance public trust in government and democratic institutions by giving citizens an effective role in public decision making.** People are more likely to trust a decision that has been influenced by the considered judgement of 'people like me' than one made solely by elected MPs.
4. **Make governance more inclusive by opening the door to a more diverse group of people.** Deliberative processes, with their use of democratic lotteries and stratified sampling, bring in people proportionally to their presence in society, making the group visibly representative in terms of age, gender, disability, education, and job type.
5. **Help counteract polarisation and disinformation.** Empirical research has shown that echo chambers that focus on culture, identity reaffirmation, and polarisation do not survive in deliberative conditions, even in groups of like-minded people.

¹ OECD (2020), *Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave*, OECD Publishing, Paris, <https://doi.org/10.1787/339306da-en>.

² Ibid.

Section C. How to Do It: Key principles for deliberative engagement

It is difficult for large groups of people to find agreement on complex decisions. The OECD recommends a set of *principles* that make group decision-making easier. These principles improve the deliberative quality of group work by creating the environment for the consideration of the broadest range of sources while giving participants time, an equal share of voice and authority.

These seven principles underpin the growing wave of deliberative processes around the globe:

1. **A clear remit:** A clear, plain-language challenge or question should be asked of the group. It should be a neutrally phrased question that explains the task, shares the problem and provides a strong platform for discussion about priorities and trade-offs. The question will determine the scope of the process, setting the boundaries for what the group is considering.

Application: *“What do all MPs need to know about Industry X and its regulation?”*

2. **Diverse information:** Participants should have access to a wide range of transparently sourced, relevant, and accessible evidence and expertise, and be able to request additional information themselves. Citizens should spend extensive time asking questions and identifying sources **they** trust for the information they need.

Application: *Participants would hear from a range of industry participants and others with a stake in the decision through a process so they can weigh the tradeoff at hand.*

3. **Democratic lottery:** A stratified random sample of the community should be recruited through a democratic lottery. Simple demographic filters (age, gender, education, location) can be used to help stratify this sample to reflect the entire population. Most engagement by government does not enable a representative cross-section of the community to be heard, instead, incentives to participate are often geared to those with the most acute interest. The combination of random selection and a meaningful opportunity to influence a decision attracts people from all walks of life.

Application: *A sample of ~32 citizens is appropriate for this task and this provides a very visible cross section of the population.*

4. **Adequate time:** These processes develop participants’ thinking on a complex issue by giving them multiple opportunities to question experts, learn from one another and find agreement on trusted sources of information. As deliberation requires adequate time for participants to learn, weigh evidence, and develop collective recommendations, the more time they are provided, the more thorough their consideration of the issue.

Application: *A set of industry hearings would likely require 4-6 all day meetings for the citizens.*

5. **Influence:** It is important to be clear what impact the work of everyday citizens will have. The convening authority should publicly commit to responding to or acting on recommendations promptly. A meaningful opportunity to influence a decision must be demonstrated to participants before they commit their time.

Application: *Citizens would be writing a briefing note to MPs knowing that this was a central, critical source for that audience.*

6. **Dialogue and deliberation, not debate:** Group deliberation entails finding common ground; this requires careful and active listening, weighing, and considering multiple perspectives, every participant having an opportunity to speak, a mix of formats, and *skilled facilitation*. The task for

the group is to find common ground on answers to the question, this emphasises the avoidance of simple majorities and challenges them with finding where they can agree.

Application: *The format creates a public interaction between a lobbying interest and the community. Major industry groups in energy, alcohol and property development have offered endorsements to nDF that they actively welcome this opportunity.*

7. **A free response:** A group should not be asked merely to (critically) review a government or parliamentary reform proposal. Instead, group members should be given a 'blank page' to provide their own set of recommendations with a rationale and supporting evidence that emerges from their shared learning.

Application: *Citizens self-write their report within a very sparing framework prompting them with (a) Recommendation, (b) Reasoning and (c) Evidence.*

We suggest that a lobbying model involving everyday people in a deliberative environment should adhere to these seven OECD principles.

Section D. Recommendation: A Tasmanian Citizens' Panel for Lobbying

We recommend that Tasmania establish Australia's first permanent *Citizens' Panel for Lobbying* to make use of deliberative democracy processes that can ensure public trust.

All participants in the lobbying market (MPs, lobbyists, clients, and the wider community) would benefit from filtering a portion of the least trusted lobbying activity through a panel of citizens chosen by a democratic lottery.

This would create the desired disintermediation between those lobbyists who encourage donations and politicians dependent on them for their electoral success.

How might this work?

The Integrity Commission would delineate a set of triggers that would direct lobbying activity through the Citizens Panel. This could apply to 'controversial' industry sectors, a threshold financial value for the matter under discussion, the size of the client (by market capitalisation or turnover), or the number of electorates affected by the decision. We are not suggesting it applies to all lobbying activity.

All participants within either a given policy area would channel their lobbying activities through the Citizens' Panel, with the panel convened once an agreed threshold was met. The Panel's task is to answer a single question ("*What do all MPs need to know about Industry X and its regulation?*") and self-write their report back to parliament.

The panel would be made up of ~32 Tasmanians chosen by democratic lottery, convened for no longer than a year. They would meet approximately monthly to hear from lobbyists on issues of their advocacy with their task being to report to MPs on what they need to know and additional considerations as a result of soliciting other voices related to the issue (thus negating the 'primacy of money' central to mistrust of lobbying – in effect, major organisations will put an issue 'on the table' and more minor market participants and community voices would get a free-rider benefit). The group would periodically publish recommendation reports back to the Parliament that compile recommendations that meet an >80% group-agreement threshold.

Specific referrals could be made to the Citizens' Panel when trigger mechanisms are set. This would focus the panel's efforts on resolving a single specific issue rather than considering the broad range of lobbying.

In considering the objection that restricting industry advocacy to limited time periods is unworkable, we would note that it is akin to the use of trade windows for players in professional sports: to maintain trust in the integrity of play external private discussions are regulated and restricted. We are applying the same principle here.

Having operated over 25 demonstration projects and with a two-year contract with the United Nations Democracy Fund to deliver demonstration projects in this field, newDemocracy is well placed to design, operate, and oversee any trials should the Commission have interest in the viability of this model. A concept design can be produced upon request.

We are happy to respond to questions and appreciate your time considering this paper.

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