



Tasmanian Council of Social Service Inc.

Model for Reform of Lobbying Oversight in Tasmania

July 2023



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 further submission to the Tasmanian Integrity Commission ('the TIC') in relation to lobbying oversight in Tasmania and the model proposed by the TIC in their report, 'Model for Reform of Lobbying Oversight in Tasmania' ('the Framework Report'). The Framework Report is the final round of consultation in the TIC's review of Tasmania's lobbying oversight model.

TasCOSS made submissions in the previous rounds of consultation. The following submission is a review of the model proposed in the Framework Report and builds on our recommendations in those submissions.

Our response to key reforms proposed in the Framework Report

Who is a 'lobbyist' and what are 'lobbying activities' is lobbying?

Our previous submission included concerns around a narrow definition of 'lobbying' which failed to capture the true extent of lobbying activities.¹ This gap has been highlighted in other jurisdictions - for example, the Human Rights Law Centre notes that the federal register of lobbyists 'provides the public with virtually no useful information. The scheme only requires independent lobbying firms to register, leaving out the approximately 80% of lobbyists who work in-house for corporations... [those] that do register have to disclose their clients, but not who they're meeting with, how often, or the decisions they're trying to influence'.²

We therefore support an expanded definition of 'lobbyist' for Tasmania as proposed by the Framework Report, which is intended to capture both commercial lobbyists as well as in-house lobbyists (people who make representations to government, including lobbying activity, on behalf of their employer).

We also support the proposed change to the definition of 'lobbying activities' to capture a broader range of activities, meetings and conversations between lobbyists and decision-makers. Under the new framework, lobbying activities are defined to include communications with 'public officials' (a broader definition than previously used – discussed below). The definition also refers to communications in which 'a person or entity seeks to advocate for or represent an interest' – we believe this terminology will allow for a broader interpretation than the previous definition, which referred to 'an effort to influence Government decision-making'. We also support the expanded information which must be included on the lobbyist register but believe it could be slightly expanded to include more information which may be relevant for decision-makers to consider and for the public to be aware of. We recommend that all registered lobbyists include information including whether they have **ever** worked as a public official, have **ever** been paid to advise a candidate on a campaign or whether they have **ever** made a donation to a public official or Tasmanian political party (rather than requiring information confirming whether they have participated in those activities over the last 12 months).

¹ TasCOSS, Submission to the Tasmanian Integrity Commission, 'Reforming Oversight of Lobbying in Tasmania' (June 2022), 6-7.

² Alice Drury, Human Rights Law Centre, Selling Out: How powerful industries corrupt our democracy (Report, 2022), 14.

We are uncertain about the potential impact of changes to the exemptions from lobbying activities. The current Tasmanian Lobbying Code of Conduct includes an exemption for ‘petitions or communications of a grassroots campaign nature in an attempt to influence a Government policy or decision’, but there is no similar provision included as an exemption in the Framework Report. The Framework Report states the exemptions have been based on practice in Ireland,³ however the legislation in Ireland does not seem to apply to volunteer organisations or campaigns.⁴ We want to ensure community organisations and volunteer-run advocacy campaigns are not unduly impacted by this change – in particular, we want to make sure the changes do prevent, or seem to prevent, government officials from engaging in contact with community organisations or advocates from community-run campaigns. In the absence of further justification in relation to why this exemption has not been included in the current model, we would recommend the following be included in the list of exemptions to lobbying activities under the Lobbying Code of Conduct:

- *Petitions or communications of a grassroots campaign nature to advocate for or represent an interest in a Government policy or decision.*

Public officials

Our previous submission raised concerns about the narrow definition of who may be lobbied under the current Lobbying Code of Conduct definition of ‘government representatives’.⁵ We highlighted the need for a broader definition of ‘government representative’ to more accurately capture communications and meetings occurring between lobbyists and government officials. We recommended a definition which included all members of Parliament, senior members of staff, and senior member of parties (for example, the Director of the Australian Labor Party), as well as councillors, aldermen and elected local government members to ensure the definition also captures decision-making at the local government level.

We support a broader definition of ‘public official’ for the purpose of lobbying regulation, as well as the implementation of minimum standards and the introduction of a ‘contact disclosure log’ to provide the community with information about contact between public officials and lobbyists.

³ Tasmanian Integrity Commission, ‘Framework Report: Model for Reform of Lobbying Oversight in Tasmania’ (June 2023), 12.

⁴ For example, the Register of Lobbying in Ireland includes this information on their website:

In the case of representative bodies and advocacy bodies, the relevant communication must be made by an employee of the body or by a person who holds a paid office in the body (for example, the chairman) and whose functions relate to the affairs of the body as a whole and where the communication is made in his/her capacity as such. This means that, in general, communications made by unpaid volunteers are not considered to be lobbying. Office holders such as chairmen and secretaries may be unpaid volunteers. If they are, communications made by them do not generally constitute carrying on lobbying activities. However, a relevant communication may be direct or indirect so, if the communication is made by an unpaid volunteer on the direction of an employee or paid office holder, it is lobbying and must be included in the organisation’s return. Representative /Advocacy bodies composed entirely of volunteers will generally be outside the scope of the Act unless lobbying about the zoning/development of land. If, however, they employ a person full-time, they would come within scope of the Act.

Register of Lobbying, Standards in Public Office Commission, <https://www.lobbying.ie/help-resources/information-for-lobbyists/guidelines-for-people-carrying-on-lobbying-activities/are-you-affected-by-the-legislation/#C>.

⁵ Currently 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 Ministerial adviser, or a Head of Agency appointed under the State Service Act 2000.

We appreciate the concerns raised in the Framework Report in relation to the potential administrative burden of including local government within the definition of ‘public official’. However, we also note recent issues raised in relation to the transparency of local government decisions, such as difficulties in enforcing current measures introduced to promote transparency within local government.⁶ We therefore urge the TIC to continue to explore mechanisms to increase accountability at all levels of government.

Disclosure

Our previous submission supported the introduction of disclosure requirements for a lobbyists, as well as the introduction of provisions to encourage more transparency around government activities.

While we are pleased the government has committed to the regular publication of Ministerial diaries, which was a recommendation of our previous submission, we recommend the government commit to publishing these diaries every month rather than every six months, to ensure the information produced is relevant to community interest around decision-making.⁷

We also strongly recommend the ‘contact disclosure log’ is easy for members of the public to access, navigate and understand. As per our previous recommendation, we urge the TIC (and the government) to consider a model similar to the publicly available website Open Access Information in the Australian Capital Territory.⁸

Compliance

We are concerned about the lack of concrete compliance measures proposed in the Framework Report, particularly the impact of the proposed regime for failure to comply with disclosure/s of lobbying contact.

Our understanding is that public officials will bear the responsibility of maintaining accurate and timely records (which will be publicly available) of meetings with lobbyists, and that compliance will be enforced under existing misconduct provisions of the *Integrity Commission Act 2009 (Tas)*. However, as per our previous submission, we have concerns about the capacity of the TIC as currently resourced to effectively monitor compliance and take action where needed. Issues have been raised in relation to the capacity of the TIC to exercise its existing functions, as well as the inadequacy of the current level of funding provided to the TIC. Furthermore, concerns have been raised about the lack of investigations in relation to the alleged misconduct of public officials in Tasmania. The Australia Institute stated in 2022 that the TIC was ‘failing to achieve its objective of public confidence that misconduct by public officers will be appropriately

⁶ For example, see Judy Augustine, ‘Hobart City councillor information compromised on public interest disclosure log’ The Mercury (26 July 2023), accessed at: <https://www.themercury.com.au/news/tasmania/new-public-interest-disclosure-log-allows-hobart-city-elected-members-to-declare-interests/news-story/b5509d81d46f2b2ac9ffa6c8cf5fa7ce> and ‘Ryan Posselt calls for greater transparency at Hobart City Council’, Hobart Breakfast (ABC Radio Hobart, 25 July 2023) accessed at: <https://www.abc.net.au/hobart/programs/breakfast/ryan-posselt-public-interest/102643188>.

⁷ ‘Calls to release ministerial diaries in Tasmania’, Mornings (ABC Radio Hobart, 20 July 2023) accessed at: <https://www.abc.net.au/hobart/programs/mornings/meg-webb/102625674>.

⁸ Australian Capital Territory Government, *Open Access Information*, accessed at <https://www.act.gov.au/open-access>.

investigated and dealt with’,⁹ noting the limited jurisdiction, lack of transparency and insufficiency of funding when compared to equivalent anti-corruption bodies in other Australian states.¹⁰

We are disappointed the Framework Report does not include any strengthened compliance mechanisms to promote accountability. While we agree advocacy and education are important, we also believe penalties or additional consequences for non-compliance would act as significant incentives for public officials, thus increasing transparency, accountability and hopefully public confidence in government decision-making. We reiterate our previous recommendations in relation to the TIC:¹¹

- 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
 - This includes the potential investigation of any person who could adversely affect the honest or impartial exercise of public administration, as well as public information in relation to the findings of any such investigation
- 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.

Success fees

We support a ban on success fees paid from clients to lobbyists as proposed in the Framework Report.

Cooling-off periods and ‘dual hatting’

We previously recommended the introduction of mandated cooling off periods to prohibit politicians from taking up roles as either in-house or commercial lobbyists for five years following their role/s in government. The Framework Report does not propose any changes to the current cooling off period of 12 months, but does recommend the expansion of the current provisions to apply to all public officials, not just Ministers, Parliamentary Secretaries and heads of agencies. This restriction only applies to lobbying activities in relation to specific portfolio areas in which they previously worked. The Framework Report also recommends provisions to restrict public officials from engaging in lobbying activities by lobbyists who previously advised them on electoral campaigns for a period of 12 months after being elected.

The Framework Report acknowledges a need to balance transparency around lobbying activities with a more restricted employment market than other Australian jurisdictions. However, we believe the changes proposed in the Framework Report provide significantly less public transparency than provisions recommended by human rights bodies – for example, the Human Rights Law Centre have recommended ‘an enforceable, three-year cooling off period for ministers and their staff’.¹² We also note the Framework Report confirms they received many submissions with recommendations to increase the cooling off

⁹ Leanne Minshull, The Australia Institute, Good government in Tasmania (November 2020) 18, accessed at <https://australiainstitute.org.au/report/good-government-in-tasmania>.

¹⁰ Ibid.

¹¹ TasCOSS, Submission to the Tasmanian Integrity Commission, ‘Reforming Oversight of Lobbying in Tasmania’ (June 2022), 10.

¹² Alice Drury, Human Rights Law Centre, Selling Out: How powerful industries corrupt our democracy (Report, 2022), 15.

period,¹³ indicating this is an issue of concern for many stakeholders. We recommend a longer cooling-off period is included for all Ministers and their staff, regardless of portfolio area.

Further opportunities for reform

Although we are supportive of the proposed changes outlined in the Framework Report discussed above, we believe these proposed changes could be accompanied by further reforms to identify and address systemic issues in Tasmania. TasCOSS takes this opportunity to reiterate our earlier recommendations for how government accountability, and public confidence in decision-making, could be strengthened by reforms.

Comprehensive investigation of the current state of lobbying in Tasmania

As highlighted in our earlier submission, TasCOSS is concerned the current lack of transparency around lobbying in Tasmania makes it difficult to ascertain the extent and nature of problems or tensions with existing practices or frameworks. We reiterate our recommendation for a comprehensive investigation into the current state of lobbying in Tasmania, as well as a thorough review of existing national and international schemes to identify the structures or models which are most likely to address existing issues with regulation, legislation and culture in Tasmania.

Other legislative reform

Although we support many of the proposed changes in the Framework Report in relation to lobbying, TasCOSS still believes there is also a need to consider whether other laws and regulations are sufficiently robust to promote government accountability and transparency in Tasmania. Although some broader issues are discussed in the Framework Report – for example, recommendations to increase transparency around political donations from lobbyists¹⁴ – we strongly recommend these reforms are accompanied by a review of other legislation and government processes. This could include for example a review of the Right to Information process and legislation, as well as consideration of the recommendations of a number of Tasmanian community organisations in relation to how these processes could be improved.¹⁵

Recommendations

1. Entity information for the lobbyist register should include the following changes:
 - Whether the lobbyist has ever worked as a public official (rather than within the last 12 months);
 - Whether they have ever been paid to advise a candidate on a campaign (rather than within the last 12 months); and
 - Whether they have ever made a donation to a public official or Tasmanian political party (rather than within the last 12 months).
2. The addition of a further exemption to lobbying activities under the Lobbying Code of Conduct:

¹³ Tasmanian Integrity Commission, 'Framework Report: Model for Reform of Lobbying Oversight in Tasmania' (June 2023), 23.

¹⁴ Ibid, 25.

¹⁵ For example, see Environmental Defenders Office, 'Transparent Failure: Lutruwita/Tasmania's ineffective right to information system and how to fix it' (July 2023), 5.

- Petitions or communications of a grassroots campaign nature to advocate for or represent an interest in a Government policy or decision.
3. The TIC should continue to explore mechanisms to increase accountability at all levels of government (including local government).
 4. Ministerial diaries should be published every month, rather than every six months.
 5. The TIC should provide disclosure information to the public in a manner that is easy to access, navigate and understand.
 6. The TIC should strengthen accountability mechanisms, including 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
 - This includes the potential investigation of any person who could adversely affect the honest or impartial exercise of public administration, as well as public information in relation to the findings of any such investigation;
 - 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; and
 - Consideration should be given as to whether a dedicated lobbying commissioner should be appointed.
 7. There should be a longer cooling-off period for all Ministers and their staff, regardless of portfolio area (at least three years).
 8. The government should commit to a comprehensive investigation into the current state of lobbying in Tasmania, as well as a thorough review of existing national and international schemes to identify the structures or models which are most likely to address existing issues with regulation, legislation and culture.
 9. The outlined lobbying reforms should be accompanied by a review of other legislation and government processes, including a review of the Right to Information process.