

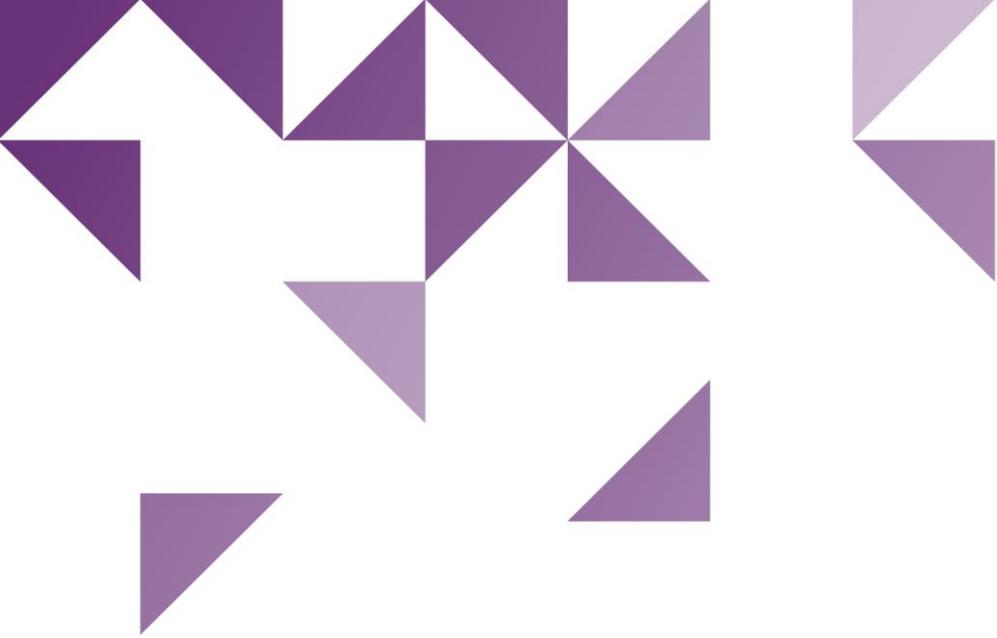


CONSULTATION PAPER

HAVE YOUR SAY:
REFORMING OVERSIGHT
OF LOBBYING IN
TASMANIA



INTEGRITY
COMMISSION
TASMANIA



The objectives of the Integrity Commission are to:

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania
- enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with, and
- enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

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This report and further information about the Commission can be found on the website www.integrity.tas.gov.au

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We acknowledge and pay our respects to all Aboriginal people in Tasmania, the traditional owners of the land upon which we work. We recognise and value Aboriginal histories, knowledge and lived experiences, and commit to being culturally inclusive and respectful in our working relationships with all Aboriginal people.

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1. Oversight of lobbying activities in Tasmania

Lobbying means trying to influence government decision-makers or policies to benefit a particular area of interest. Lobbying of elected officials and senior officers is an accepted and important part of democratic representation and government decision-making.

It is also an area of risk where conflicts of interest, bias and undue influence can arise. We can safeguard against these risks by having effective transparency and accountability measures in place for lobbying activities. These measures will also increase public confidence and trust in government and public administration.

The purpose of this paper is to consider how Tasmania might improve oversight of lobbying and help create greater transparency around public administration and government decision-making.

The existing State Government [Register of Lobbyists](#) and accompanying [Lobbying Code of Conduct](#) were implemented in 2009, just before the Integrity Commission Tasmania was established. The Register of Lobbyists and the Lobbying Code of Conduct have been administered by the Department of Premier and Cabinet (DPAC) until now.

In 2022, the responsibility for administering the Tasmanian Register and the Code of Conduct will transfer to the Integrity Commission (the Commission). This means that an independent statutory authority will administer the Register and the Code of Conduct, as already occurs in Victoria, New South Wales, Queensland and Western Australia.

Now is an appropriate time to review how lobbying is managed in Tasmania and other jurisdictions, and to seek expert and community views on the best system for managing and recording lobbying within Tasmania. This consultation paper aims to highlight the issues and risks associated with lobbyists and lobbying within state government and their potential impact on public decisions.

We are interested in hearing your experiences of lobbying and your opinion on whether and how our current model should be changed. You may be someone who has been lobbied, or is or has been a lobbyist. You could be someone who has been affected by decisions resulting from lobbying, or perhaps someone who has specific expertise or interest in this area.

We hope that this diverse input will help strengthen this reform process and provide an opportunity for Tasmania to establish a lobbyist system that is robust, efficient and transparent, and that leads to increased public confidence in decision-making by our elected representatives and public officials.

We have tried to keep our review of the issues brief, and have provided prompt questions for you to consider when making your submission. A more detailed research report on lobbying is [available on our website](#) if you would like to explore these issues in more detail. The research paper includes background information, legislation, and regulatory models from other jurisdictions.

Information on how you can make a submission is available in **Section 4 – How to make a submission** on page 10 of this paper.

2. About lobbying in Tasmania

2.1. What is lobbying?

Lobbying is when a person or group of people attempt to influence government decision-makers or other government representatives to benefit their area of interest. Lobby groups or lobbyists may include or represent those with:

- ▼ economic interests (such as businesses and corporations)
- ▼ professional interests (such as associations, unions, or guilds), or
- ▼ civil society interests (such as charities, sporting clubs, and environmental groups).

Lobbying is often undertaken by professional lobbyists paid by a third party or organisation to act on their behalf. However, it can also be undertaken by employees of companies ('in-house' lobbyists), private citizens, or volunteers.

Lobbying can be a useful way to participate in decision-making and to contribute expertise and knowledge to the development of public policy. It is important for our elected representatives, particularly Ministers, to understand all aspects of issues and the potential impacts of proposed policies.

However, lobbying also poses a risk where people with the most resources or closest connections with decision-makers may seek to exert undue influence over the awarding of grants or contracts, allocations of funding, or the direction of programs, policies, and legislation.

Lobbying is often conducted in private, with little or no public accountability for meetings or issues discussed. It can create perceptions of decisions being made to serve particular interests rather than the public interest.

The Organisation for Economic Co-operation and Development (OECD) has surveyed lobbyists and people who are lobbied. [The survey results](#) show a consensus among lobbyists and legislators that lobbying transparency would help alleviate actual or perceived problems of inappropriate influence by lobbyists.

2.2. How is lobbying currently regulated in Tasmania?

Regulation of lobbying of state government representatives in Tasmania commenced in 2009 with the Register of Lobbyists being established. This is a publicly available document overseen by DPAC and governed according to the Lobbying Code of Conduct.

The system is based on an administrative model, which means it is not prescribed in law. It defines lobbying activities as 'communications with a government representative in an effort to influence government decision-making ...'. Lobbyists are required to be included on the Register of Lobbyists to be allowed to meet with ministers and other government representatives on behalf of a client. There are currently 65 registered lobbyists in Tasmania.

The Register of Lobbyists aims to encourage voluntary compliance by people who are lobbied. That means that government representatives should not meet or communicate with an unregistered lobbyist. Government representatives may be disobeying other workplace codes of conduct if they breach the Lobbying Code of Conduct if, for example, they meet with an unregistered lobbyist.

Regulation of lobbying in other states and overseas provides examples of how Tasmania might improve oversight and help create greater transparency around public administration and government decision-making. This includes increased onus on people who are lobbied through the publication of Ministerial Diaries and contact reporting, and increased information about lobbyists, including declarations of financial interests, foreign clients and former associations with government agencies or political parties.

2.3. The role of the Integrity Commission

The Commission has authority under Section 8(1)(e) of the *Integrity Commission Act 2009* to 'establish and maintain codes of conduct and registration systems to regulate contact between persons conducting lobbying activities and certain public officers'.

The administration of the Lobbying Code of Conduct and the Register of Lobbyists are soon to be transferred from DPAC to the Commission. This means the Commission will have the dual role of administering the Register of Lobbyists (and any other potential transparency mechanisms) and monitoring both the Register of Lobbyists and compliance with the Lobbying Code of Conduct.

Until this transfer, the Integrity Commission has had little involvement with either the Register of Lobbyists or the Lobbying Code of Conduct.

3. Key issues for discussion

3.1. People who are lobbied (public officers)

The Commission has the power to establish a code of conduct and registration system to regulate contact between lobbyists and ‘certain public officers’. ‘Public officers’ are people who are employed in state government departments and entities, and include people who are appointed or elected to particular positions.

The existing Lobbying Code of Conduct relates to the lobbying of ‘government representatives’. It defines ‘government representative’ 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.

The Commonwealth and other states all include ministers and parliamentary secretaries as public officers for the purposes of lobbying regulation. Beyond that, there is considerable difference between states as to which public officers are included.

Submission prompts

1. *Should all Members of Parliament be included?*
2. *Should all state servants and bureaucrats be included or only those most senior?*

3.2. Standards of conduct

The OECD has published [The 10 Principles for Transparency and Integrity in Lobbying](#). Principle 8 states:

Lobbyists should comply with standards of professionalism and transparency; they share responsibility for fostering a culture of transparency and integrity in lobbying.

Standards for lobbyists are usually expressed in a code of conduct. The existing Tasmanian Lobbying Code of Conduct provides standards of behaviour for lobbyists when engaging with government representatives.

However, the Lobbying Code of Conduct does not provide standards for government representatives who may be lobbied. It does impose a responsibility on government representatives to not be part of lobbying activities with an unregistered lobbyist. Most government representatives will also be required to comply with a workplace code of conduct, such as the State Service Code of Conduct, which requires them to behave honestly and with integrity in the course of State Service employment.

Submission prompts

3. *What standards of behaviour or conduct should be included in a code of conduct?*
4. *Should lobbyists be prohibited from giving gifts to people who are lobbied?*
5. *Should a lobbying code of conduct include standards of conduct for both lobbyists and people who are lobbied?*

3.3. What is included in lobbying activities?

The current Lobbying Code of Conduct defines 'lobbying activities' as

communications with a Government representative in an effort to influence Government decision-making including the making or amendment of legislation, the development or amendment of a Government policy or program, the awarding of Government contract or grant or the allocation of funding ...

'Communications' is defined in the Lobbying Code of Conduct as including 'oral, written and electronic communications'.

Existing exemptions from the Lobbying Code of Conduct include:

- (a) communications with a committee of the parliament
- (b) communications with a minister or parliamentary secretary in his or her capacity as a local member of parliament in relation to non-ministerial responsibilities
- (c) communications in response to a call for submissions
- (d) petitions or communications of a grassroots campaign nature in an attempt to influence a government policy or decision
- (e) communications in response to a request for tender
- (f) statements made in a public forum, and
- (g) responses to requests by government representatives for information.

Submission prompts

6. *What activities, if any, should be exempt from the definition?*
7. *Should registerable lobbying activity be triggered by one communication only?*
8. *What sort of contacts, communications or other actions should be included as lobbying activities?*

3.4. Who or what is a lobbyist?

The Lobbying Code of Conduct defines a lobbyist as

any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client.

The definition excludes groups and individuals such as charitable and religious organisations, non-profit organisations, professional associations, guilds, trade unions, members of some professions and individuals making representations on behalf of family or friends regarding personal affairs.

It specifically excludes ‘any person, company or organisation, or the employees of such company or organisation, engaging in lobbying activities on their own behalf rather than for a client’.

Submission prompts

9. *How should the term ‘lobbyist’ be defined?*
10. *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?*
11. *Is receiving payment or setting an expenditure limit an appropriate test for a lobbyist to be included?*
12. *If in-house lobbyists are to be included, should percentage of time spent lobbying be an appropriate test for inclusion?*
13. *If in-house lobbyists are to be included, should the number of employees in an entity be used as a qualification test?*
14. *What information should lobbyists be required to provide when they register?*

3.5. Disclosures and transparency

Generally, registers of Australian lobbyists act as little more than a directory of third-party lobbyists and who or what they act for. Some states require the publication of ministerial diaries disclosing contacts with lobbyists (monthly; quarterly; annually), along with the lobbyists who were present and the purpose of the meeting. From the lobbyist side, some states require disclosures of every contact with public officials, and the purpose of the contact.

The OECD has developed several core disclosures to maintain transparency and for a lobbyist register to be meaningful. Core disclosures should let the viewer identify:

- ▼ the interests represented (for example, the ‘client’)
- ▼ the object of the lobbying activity, and
- ▼ the government institution or people being lobbied.

Currently, the Tasmanian Lobbying Code of Conduct and Register require third-party lobbyists to provide only one out of the three OECD core disclosures. It enables the identification of the interests represented (the client) but does not show the object of the lobbying activity or the government representatives being lobbied.¹

Submission prompts

15. *What information should be disclosed on an online register?*
16. *Should public officers disclose diaries or other information disclosing communications with lobbyists?*
17. *If lobbyists and people who are lobbied are to make disclosures, how frequently should this happen?*
18. *Would disclosures be more likely or reliable if they were made by government representatives rather than lobbyists?*

3.6. Compliance

Breaking the rules of a code of conduct is different to breaking the law. Tasmania's lobbyist system currently operates as a form of 'soft law'. It is not legally binding and relies on being managed through the Lobbying Code of Conduct. A code of conduct might have criteria for registration or de-registration of lobbyists, however it is unlikely that more heavy penalties can be applied by the Lobbying Code of Conduct itself.

Under the current system, the only sanction for a lobbyist is to be removed from the Register of Lobbyists. Other sanctions are available for public officers who are subject to lobbying, through a possible breach of their employment code of conduct or the Lobbying Code of Conduct itself.

The Commission has the authority to maintain a registration system and code of conduct, but it is doubtful that further sanctions for breaches can be included in the Lobbying Code of Conduct without being specifically enabled by law.

Submission prompts

19. *Does Tasmania need specific legislation to empower the Integrity Commission to provide compliance measures?*
20. *What, if any, sanctions should be included as part of a lobbying regulatory system?*

¹ Organisation for Economic Co-operation and Development, *Lobbyists, Governments and Public Trust, Volume 1: Increasing Transparency through Legislation* (OECD Publishing, 2009) 58

3.7. 'Revolving door' bans

The 'revolving door' refers to elected officials and public officers moving to roles in lobby groups. The 'revolving door' from public office to lobbyist could threaten the integrity of government in three ways:

1. public officers could be influenced by the implicit or explicit promise of a lucrative job in the private sector with an entity seeking a government contract or to shape public policy
2. public officers-turned lobbyists may have access to lawmakers and other government representatives that is not available to others, and
3. public officers-turned lobbyists may have access to specialist knowledge gained during their time in government.

Submission prompts

21. Are bans on public officers moving into lobbying roles appropriate?
22. How long should the 'cooling off' period be before public officers can become lobbyists?
23. Which public officers should be subject to cooling off periods?

3.8. Success fees

A 'success fee' is a fee given to a lobbyist for successfully achieving the desired outcome for a third party. A success fee is defined in Section 20 of the Western Australian [Integrity \(Lobbyists\) Act 2016](#) as meaning

any commission, payment or other reward (whether pecuniary or otherwise) if the giving or receiving of all or part of the commission, payment or reward depends, whether directly or indirectly, on – (a) the outcome of the lobbying activity; or (b) the outcome of a matter about which the lobbying activity is undertaken.

Other Australian states have similar definitions. All states, except Tasmania, ban paying or receiving of success fees.

The purpose of banning success fees is to remove an incentive for misconduct. There is a risk that success fees could distort or bias public decision-making.

The ban on payment of a success fee is on the third-party client of a lobbyist and the ban on receiving the success fee is on the lobbyist receiving such a fee.

Submission prompt

24. Should receiving or paying success fees be prohibited?

4. How to make a submission

We invite you to submit your views on how lobbying should be managed in Tasmania. The prompt questions are there to help you but your submission does not need to address any or all of them.

We are interested in hearing:

- ▼ your experiences of lobbying, or
- ▼ your opinion on how our current model should be changed.

We will read and carefully consider all submissions. If you choose to respond to specific prompts or content from this consultation paper or the associated research paper, please clearly show in your submission which parts you are referring to as this will help our analysis.

The deadline for submissions is **30 June 2022**.

You can provide your submission in writing via one of the following options:

- ▼ our online portal: www.integrity.tas.gov.au/lobbying-oversight
- ▼ email: prevention@integrity.tas.gov.au
- ▼ post:
Chief Executive Officer
Integrity Commission Tasmania
GPO Box 822
Hobart TAS 7001

All queries about this consultation process can be directed to **Dr Kylie Fisk**, Acting Director, Misconduct Prevention, via email: kylie.fisk@integrity.tas.gov.au or by calling 1300 720 289.

Accessibility of submissions

We understand that not all people or groups are equally placed to access and understand information. We want to make sure that our information is accessible and easily understood by people with diverse communication needs.

If making a written submission is not accessible to you, please visit our accessibility page at integrity.tas.gov.au/accessibility or phone 1300 720 289 to get advice on other ways to participate.

Where possible, please type your submission in plain English and provide it in Microsoft Word format or equivalent. The easiest way of making your submission is through our online portal.

The Commission cannot take responsibility for the accessibility of submissions or documents provided by other parties as part of this consultation.

Submissions are public unless requested to be confidential

We will treat all submissions as public unless you ask for your submission to be treated as confidential or for your name (and/or the name of your organisation) not to be published.

We will not publish submissions that we believe are defamatory or offensive. If your submission includes information that could identify other people, then all or part of that submission may not be published.

You, as the writer, keep copyright over your submission. Copyright does not belong to the Commission or the Tasmanian Government.

