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# **Submission on reforming lobbying oversight in Tasmania**

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## Summary

We welcome the opportunity to provide input to the Tasmanian Integrity Commission's review of lobbying oversight.

Lobbying is an important part of the democratic 'contest of ideas'. But this contest takes place on an uneven playing field if money and relationships can make a big difference to access and influence. Transparency around lobbying activity helps encourage a more level playing field.

Oversight efforts should be focused on providing the public, media, and parliament with better information on who gets regular access to policy makers, and what the policy issues involved are. This gives countervailing voices an opportunity to speak up, and encourages policy makers to seek out a wider range of views.

Lobbying oversight in Tasmania currently consists of a register and a code of conduct, but both these instruments are too narrow to provide meaningful transparency and oversight of regular lobbying activity.

The Tasmanian register of lobbyists should be expanded to include all those who lobby regularly, whether for a client, a peak body, union, or other employer. Lobbyists on the register should declare who and what they are lobbying for. And they should abide by the code of conduct.

Wherever possible though, the burden of regulation should be borne by the lobbied rather than the lobbyist. The goal is not to deter advocacy but to underscore the responsibilities of public officials.

All public officials, including politicians, should be obliged to act with integrity and fairness and uphold public trust, including when dealing with lobbyists.

Regulation of post-separation employment for senior public officials is essential. A cooling-off period of at least 18 months helps to minimise the risks associated with inside information and key relationships.

Tasmanian ministers should publish their diaries, to improve visibility of lobbying. And they should embrace policy review processes that actively seek out a range of voices – including those of disadvantaged groups and more diffuse interests. Boosting countervailing voices in public debates gives politicians and public officials better information with which to adjudicate the public interest.

## 1 Who's in the room matters

Lobbying is an important part of the democratic 'contest of ideas'. But this contest takes place on an uneven playing field if money and relationships can make a big difference to access and influence.

### 1.1 Advocacy is an essential part of democracy

Democracy works best when groups can make representations to government and advocate for themselves. This is critical to keeping government in check and to the development of good policy.

Lobbying can introduce new ideas into the pool of potential policies, as well as reduce the likelihood of those in office making uninformed or damaging decisions.

Lobbying itself is not the problem. The problem is that some interests have a lot more opportunity to influence than others.

It shouldn't be about how much money you have or whether you know the right people – but too often it is.

### 1.2 Some groups get a lot more access than others

The playing field for access and influence isn't fair.

In 2018 we published a report called *Who's in the room?* that crunched the numbers on political donations and lobbying activity to understand the links between money, access, and influence in Australian politics.<sup>1</sup> We found that the well-resourced and highly

motivated achieve much greater access and influence than most Australians could ever expect.

Our research showed that well-resourced groups, particularly big business and unions, use money, resources, and relationships to influence policy to serve their interests.

In particular, highly regulated businesses – those that have the most to gain, or lose, from government decisions – have the most meetings with senior politicians, make the most use of commercial lobbyists, and are also disproportionately large donors (see Figure 1.1). Many of these businesses have the resources to hire former politicians and advisers, and to woo politicians through hospitality.<sup>2</sup>

Some industries, such as gambling and property development, are hugely over-represented compared to their contribution to the economy (Figure 1.2).

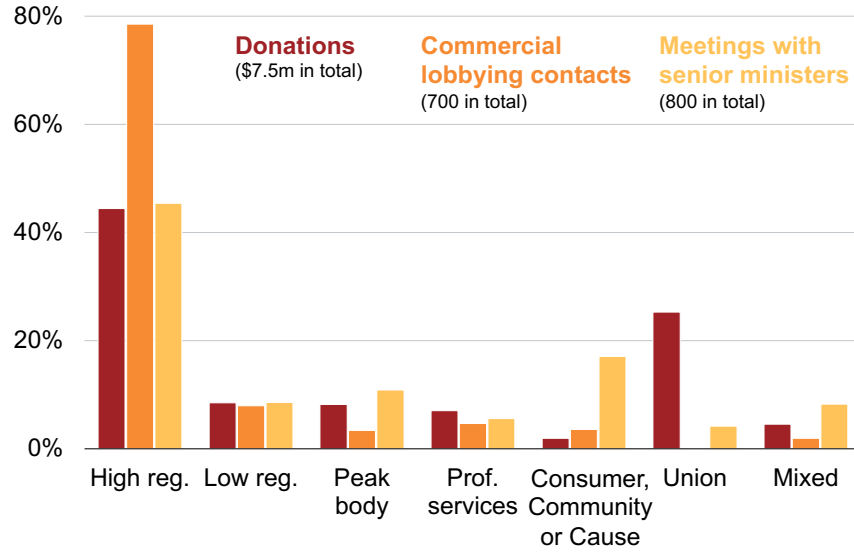
No one should be surprised that these groups are knocking on politicians' doors. But the job of government is to represent – to seek out a wide range of views and, with those views in mind, adjudicate the public interest. Those who come knocking are not representative.

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<sup>1</sup> Wood, Griffiths, and Chivers (2018).

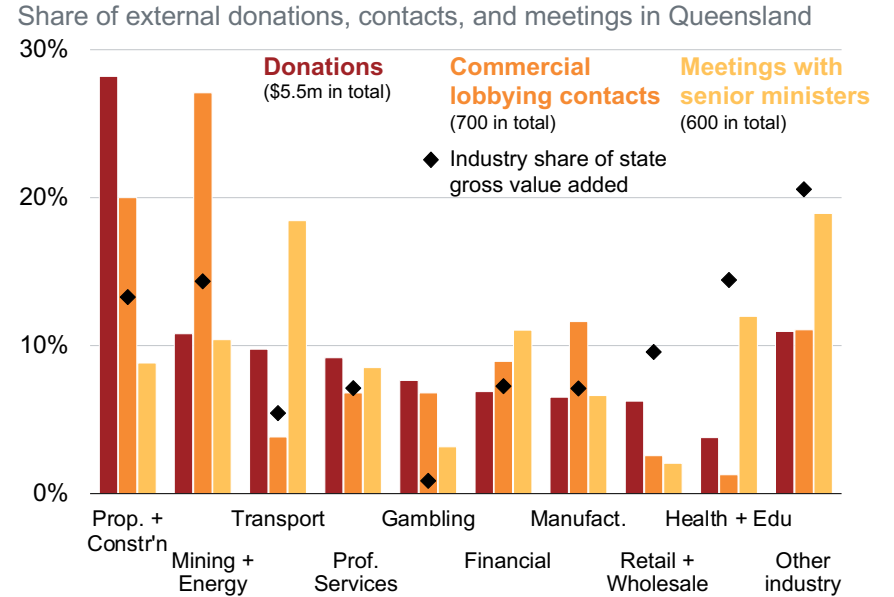
<sup>2</sup> Wood, Griffiths, and Chivers (2018, Chapter 2).

**Figure 1.1: Highly regulated industries lobby most**  
Share of external donations, contacts, and meetings in Queensland



Notes: Analysis was conducted only for Queensland, where data on commercial lobbying contacts is available. Individuals and unknown entities excluded (individuals represented 13% of major donations and unknown entities <1%). All donations declared to April 2018. Lobbying contacts includes only clients that made at least five contacts. Sources: Electoral Commission of Queensland disclosure returns; Queensland Government lobby contacts register; Queensland ministerial diaries.

**Figure 1.2: Gambling, property development, and construction industries are over-represented compared to their economic contribution**  
Share of external donations, contacts, and meetings in Queensland



Notes: Analysis was conducted only for Queensland, where data on commercial lobbying contacts is available. 'NA' and 'Multiple Categories' excluded (41% of major donors, mostly individuals). All donations declared to April 2018. Lobbying contacts includes only clients that made at least five contacts. The gambling industry's share of gross value added is shown as all of 'Arts and Recreation', although gambling represents only a subset. Sources: Electoral Commission of Queensland disclosure returns; Queensland Government lobby contacts register; Queensland ministerial diaries; ABS 5220.0 (2016-17).

### 1.3 Greater access can lead to undue influence

When certain interests get a lot more access to decision-makers, there is a risk that policy gets skewed in their favour at the expense of the public interest.

Good policy depends on the best ideas prevailing, not simply the loudest voices.

Our research shows that consumer and community voices are often not in the room at all. It can be difficult for broad constituencies such as ‘taxpayers’ or ‘young people’ to collectively organise and advocate for themselves.<sup>3</sup> Many disadvantaged groups also lack the capacity to engage with policy processes.

This impoverishes debate, undermines the contest of ideas, and can lead to policy that serves the few rather than the many.

### 1.4 Oversight of lobbying should focus on transparency

Transparency around lobbying activity can help level the playing field and protect the public interest.<sup>4</sup> Greater public scrutiny might encourage policy makers to seek out a wider range of views. And it can alert under-represented groups to speak up when a particular policy issue is ‘live’.

Oversight efforts should be focused on providing the public, media, and parliament with better information on who gets regular access to policy makers, and what the policy issues involved are.

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<sup>3</sup> The few that stand to gain a lot tend to be more motivated to persuade decision-makers than the many that each stand to lose a little, even if the collective losses are substantial: Olson (1965).

<sup>4</sup> The OECD (2013) argues ‘a sound framework for transparency in lobbying is crucial to safeguard the integrity of the public decision-making process’.

## 2 The lobbyist register and code of conduct are too narrow

Lobbying oversight in Tasmania currently consists of a register and a code of conduct, but both these instruments are too narrow to provide meaningful transparency and oversight of regular lobbying activity.

### 2.1 Broaden the lobbyist register

The Tasmanian lobbyist register captures only third-party lobbyists – those who are paid to lobby politicians on behalf of a client. Ideally the register would include all those paid to lobby regularly ('repeat players'), whether they are lobbying for a client, a peak body, union, or other employer. The challenges are in defining 'repeat players' and enforcing registration.

Distinguishing 'repeat players' helps to reduce the administrative burden on 'ad hoc' and 'one-off' lobbying activity.<sup>5</sup> An expanded register should include, at a minimum, any lobbyists with regular access to the Tasmanian Parliament. These lobbyists are clearly repeat players, and their access should be denied if they fail to register or if they breach the code of conduct.

Any former politician, ministerial adviser, or senior government official who engages in lobbying (whether for a client or an employer) should be required to register. To help monitor the cooling-off period (Section 2.4), the register should identify when they left public office.

The current onus on politicians to enforce registration is appropriate – regulation should be borne by the lobbied rather

than the lobbyist wherever possible – although the effectiveness of this approach should be examined.

### 2.2 Publish lobbying contacts

An expanded lobbyist register that includes in-house lobbyists as well as third-party lobbyists should also include more information on lobbying activity.

All registered lobbyists should be required to record their lobbying contacts – who was lobbied, the date, the party represented (for third-party lobbyists), and the subject matter – and provide this information to the Integrity Commission to make publicly available. The Queensland Integrity Commissioner administers a register of lobbying contacts that could provide a guide. Tasmania should look to make a similar register downloadable and searchable.

### 2.3 The code of conduct should apply to everyone

While the lobbyist register should apply to 'repeat players', the code of conduct should apply to anyone lobbying in Tasmania – whether they are 'repeat players' or 'ad hoc lobbyists'.

A broad code of conduct is difficult to enforce but at least gives government officials an avenue to raise a complaint if they observe unethical lobbying.

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<sup>5</sup> Wood and Griffiths (2019a).

The Tasmanian code is not onerous – it specifies minimum ethical standards of conduct that should apply to anyone lobbying. These include not engaging in misleading or corrupt conduct.

#### **2.4 A 'cooling-off' period for senior public officials is essential**

A cooling-off period – where senior public officials cannot engage in lobbying immediately post-employment – helps to minimise three main risks. First, senior officials could make a decision while in office with a view to their future employment. Second, they may bring privileged information with them to their new role. And third, their relationships may enable privileged opportunities to influence.

Each of these risks 'cools' over time – for example, privileged information may no longer be relevant after a tender process is complete, or a change of government might make relationships less valuable to the new employer. The length of the cooling-off period should strike a balance between minimising these risks and minimising restrictions on people's careers. We recommend a cooling-off period of at least 18 months.

Enforcing the cooling-off period is tricky.<sup>6</sup> Potential breaches should be investigated by the Integrity Commission or another independent body. If a breach is determined, then the relevant political party should encourage resignation from the new role or deferral of employment. If the individual continues in the role, then their access to public officials should be denied (for example, by restricting their physical access to parliament and requiring political parties to assist in denying access).

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<sup>6</sup> Some options are canvassed in Wood and Griffiths (2019b).

### 3 Broader transparency measures would help level the playing field

Lobbying oversight should aim to promote transparency of lobbying activity and accountability of public officials. Broader transparency measures give countervailing voices an opportunity to speak up, and encourage policy makers to seek out a wider range of views.

#### 3.1 Publish ministerial diaries

Ministerial offices should publish details of all official meetings, both in the office and offsite, all scheduled phone calls, and all events attended by a minister in an official capacity. 'Official meetings' should include those at which a minister was present as well as those held with ministerial advisers only. Records of meetings should identify those present and key issues discussed.

To be useful, ministerial diaries must be published in a timely manner and an accessible form. For example, all meetings for one month could be published by the end of the following month, as already happens in Queensland. The publication should be searchable and exportable, to facilitate scrutiny.

#### 3.2 Boost countervailing voices in policy review processes

Citizen engagement is a core responsibility of politicians and public servants. But it's not easy. One way to get better, more inclusive policy debates is to embrace policy review processes that actively seek out a range of voices.

Various institutions and processes already facilitate this and could provide a guide.<sup>7</sup> For example:

- The Productivity Commission inquiry process is a best-practice example of broad consultation. It requests input from groups on all sides of a debate, publishes their submissions, holds public hearings to test the views of interested parties, publishes a draft that includes recommendations, and then holds another round of consultation on the draft. The government is required to table the commission's findings and respond to recommendations within 25 sitting days.
- The Senate and House of Representatives committee hearing processes, while not exhaustive, also draw out views from a range of parties and put them on the public record. The 2018-19 House inquiry on the implications of removing refundable franking credits, while highly politicised, adopted an innovative approach to consultation. Time was allocated at every public hearing for interested members of the public to make three-minute representations to the committee.

Disadvantaged and diffuse interests are often under-represented in policy debates. The Tasmanian Government should consider creating an advocacy contact office to help such groups navigate the process of making contact with parliamentarians and public servants.

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<sup>7</sup> Wood et al (2018, pp. 67-68).



## References

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