



IN WHOSE INTEREST?

The case for reforming the Northern Territory lobbying regime *A report commissioned by Lock the Gate*

'Lobbying can provide decision-makers with valuable insights and data, as well as grant stakeholders access to the development and implementation of public policies. However, lobbying can also lead to undue influence, unfair competition, and regulatory capture to the detriment of the public interest and effective public policies. A sound framework for transparency in lobbying is therefore crucial to safeguard the integrity of the public decision-making process'.¹

Executive summary

The Northern Territory's ('NT') lobbying regime has the ignominious distinction of being the weakest in the country. It features none of the hallmarks of fit-for-purpose lobbying regulation and bears the precise characteristics that the OECD warns may result in lobbying activity steering government decision-making away from the public interest: a lack of transparency, and a lack of integrity.² Indeed, lax regulation of political lobbying breeds what Joo Cheong Tham has described as a 'trinity of vices: secrecy, corruption and unfairness'.³

Lack of fit-for-purpose lobbying regulation has tangible consequences for how important public decisions are made. Poor lobbying regulation means that electors are kept in the dark about decisions affecting their interests, and cannot appropriately respond at the ballot box. It also distorts the incentive structures for public office holders, leading to the risk that they might be less concerned with governing than with currying favour in the private sector in order to improve their future employment prospects.

¹ Organisation for Economic Cooperation and Development, 'Transparency and Integrity in Lobbying' <https://www.oecd.org/corruption/ethics/Lobbying-Brochure.pdf>, 2013, accessed 1 July 2023.

² Organisation for Economic Cooperation and Development, 'Setting the Rules for Lobbying' <https://www.oecd.org/about/impact/setting-the-right-rules-for-lobbying.htm>, accessed 1 July 2023.

³ Joo-Cheong Tham, 'Democracy before Dollars: the Problems with Money in Australian Politics and How to Fix Them', *Papers on Parliament No 7* (December 2019) 23, 28.

What is a fit-for-purpose lobbying regime?

The development of a fit-for-purpose lobbying regime is essentially a balancing act.

On the one hand, lobbying regulation should never go so far as to prevent or dissuade citizens or civil society from exercising their democratic rights. It ought to be recognised from the outset that free expression and petitioning of democratic representatives is something *desirable* in a democratic system of government.

On the other hand, any fit-for-purpose lobbying regime must ensure that there is *equality of opportunity* to exercise these democratic rights. All too often do moneyed interests exercise a disproportionate degree of influence over our elected representatives, and all too often are there pecuniary and post-separation employment incentives for our elected representatives to behave more favourably towards these moneyed interests. In this sense, much like the regulation of political donations, fit-for-purpose lobbying regulation seeks to level the playing field of influence between ordinary citizens and wealthy interests. As the OECD recommends, lobbying regulation should seek to provide 'all stakeholders fair and equitable access to the development and implementation of public policies'.⁴

Proactive transparency is also a crucial dimension of a fit-for-purpose lobbying regime. Australian representative government functions best when voters have access to maximal information. Proactive disclosure of lobbyists, lobbying activities and lobbying clients allows the media to effectively perform its scrutiny function, and the electorate to punish or reward their representatives for their engagement with lobbyists.

With these principles in mind, the hallmarks of a fit-for-purpose lobbying regime include:

1. Effective regulation

Lobbying of government representatives is a realm of public activity with potentially serious repercussions for the creation of public policy and exercise of public power. It is therefore imperative that lobbying **be regulated**. Unlike *every other jurisdiction in Australia*, this is not the case in the NT.

The Northern Territory Ministerial Code of Conduct ('NTMCC') states that '[m]inisters must handle lobbying by business and other parties carefully and ensure their personal interests do not clash with or override their public duties'.⁵ This is the full extent of any 'regulation' in the NT — a mere unenforceable Ministerial directive. An exhortation to prudence in a Code that is enforceable only by the leader of the Government is inadequate to guarantee that the public interest always takes primacy in governmental decision-making.

⁴ Organisation for Economic Co-operation and Development (n 1) 3.

⁵ *Northern Territory Ministerial Code of Conduct* (NT) s 8.9.

Lobbying Codes of Conduct must be **enshrined in legislation**. This is a feature of the strong regimes in place in Canada,⁶ the United Kingdom,⁷ and most of Australia's states.⁸ Without legislative backing, the potential for a Code to incentivise compliance, deter breaches and increase the transparency of lobbying is significantly limited. For example, in 2020, the Commonwealth Auditor-General described the Commonwealth Code as a 'non-legislated, light touch approach'.⁹ By necessary implication, the NT Code is no approach at all.

Alternative, feasible, and preferable regulatory regimes to the current NT scheme may include self-regulation, co-regulation or alternative regulatory instruments such as educational media campaigns.¹⁰ While these are preferable to the current regime, the gravity of lobbying activity suggests that the NT should catch up with Queensland, South Australia, New South Wales and Western Australia by enshrining a lobbying Code of Conduct that is overseen by an independent, preferably apolitical, public servant — rather than the leader of the Government.

2. Broad definitions of 'lobbying' and 'lobbyist'

To be fit-for-purpose, any regulatory regime must define 'lobbying' and 'lobbyist' sufficiently broadly to capture all relevant conduct.

The definition of 'lobbying' must capture any attempt to influence the decision-making of a government or opposition representative in the exercise of their official functions. As Transparency International notes, the operative definition of lobbying should also include 'any direct or indirect communication with a public official that is made, managed or directed with the purpose of influencing public decision-making'.¹¹

Because in-house lobbyists perform a function analogous to that of third-party lobbyists (insofar as they promote the interests of their employing entity to government), they must be treated the same way as third-party lobbyists. The definition of 'lobbyist' must therefore capture any person engaging in lobbying activity, rather than only those lobbying on behalf of a client. The definition of 'lobbyist' should also encompass activities done without compensation.¹²

3. Promoting transparency

Public confidence in elected representatives requires that lobbying activity is transparent. Transparency also provides for a more informed representative democracy in which both the media and the public are better positioned to scrutinise the behaviour of their

⁶ *Lobbying Act*, RSC 1985, C-44.

⁷ *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014* (UK) pt 1

⁸ See *Integrity Act 2009* (Qld) ch 4; *Lobbyists Act 2015* (SA); *Lobbying of Government Officials Act 2011* (NSW); *Integrity (Lobbyists) Act 2016* (WA). Cf *Lobbying Code of Conduct* (Tas); *Victorian Government Professional Lobbyist Code of Conduct* (Vic).

⁹ Australian National Audit Office, *Management of the Australian Government's lobbying Code of Conduct: Follow up Audit* (Auditor-General Report No 48 2019-20, 26 June 2020) 19 [1.12].

¹⁰ Australian Government, *The Australian Government Guide to Regulation* (Report, March 2014) 28-9.

¹¹ Access Info Europe, Open Knowledge, Sunlight Foundation, Transparency International, *International Standards for Lobbying Regulation* (Report, 2015) 3.

¹² *Ibid*.

representatives.

To promote transparency in the NT, lobbying activity should be periodically disclosed via:

- Maintenance of a publicly available, searchable Lobbyists' Register which includes dates and details of meetings between lobbyists and representatives; and
- Publication of the diaries of ministers, shadow ministers and their Chiefs of Staff.

Diary disclosures are a valuable accountability mechanism, and are already required in New South Wales,¹³ Queensland¹⁴ and the Australian Capital Territory.¹⁵

4. Promoting accountability

A legislated Code of Conduct must be backed up by a package of 'effective, proportionate and dissuasive' sanctions that are designed to incentivise compliance and deter breach, as well as a powerful non-political regulator with a mandate for enforcement.¹⁶ The NTMC's piecemeal and, frankly, lacklustre warning that 'government agencies will be notified' of any breach of the Code is patently insufficient.

In addition to deregistration from the Lobbyists' Register, other appropriate penalties include fines and criminal sanctions.¹⁷ There is also a strong case for considering innovative compliance mechanisms including the confiscation of parliamentary access passes, and, in cases of egregious breach, ineligibility to receive government grants or be party to government contracts for a period. These sanctions should usually be on a sliding scale, and become increasingly punitive for cumulative, successive and serious breaches.

To enforce the sanctions, there must be a well-resourced and independent regulator.

5. Closing the revolving door

The 'revolving door' refers to the propensity of former government officials to become lobbyists, and, less frequently, lobbyists to become public officials. Many former politicians leave public office to retire or return to their pre-politics profession — but an increasing number turn to lobbying and its lucre after leaving office or not being re-elected.

Lobbying is no innocuous profession. Politicians leave office with knowledge, connections and parliamentary nous which, while incidental to their public service, is often sought after by influential moneyed interests seeking preferential treatment.

¹³ *Premier's Memorandum M2015-05-Publication of Ministerial Diaries and Release of Overseas Travel Information* <<https://arp.nsw.gov.au/m2015-05-publication-ministerial-diaries-and-release-overseas-travel-information>>.

¹⁴ *Queensland Government Ministerial Handbook* [3.12]

¹⁵ See *Freedom of Information Act 2016* (ACT) ss 23(1) (definition of 'open access information' (a)(iii)), 24(1).

¹⁶ Access Info Europe, Open Knowledge, Sunlight Foundation, Transparency International (n 11) 12.

¹⁷ *Lobbyists Act 2015* (SA) ss 5(1), 11(1), 14(1), 17; *Integrity (Lobbyists) Act 2016* (WA) ss 8(1), 24(1); *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014* (UK) s 12(7).

The rationale behind closing the revolving door via the imposition of employment restraints is therefore clear. Parliamentarians are elected to *represent their constituency* and *administer departments of state* on behalf of the public. If allowed to immediately seek private sector employment relevant to their previous duties, they may seek to curry favour with potential future employers while in office, and may regulate them favourably with a view towards their post-parliamentary career rather than towards their immediate public duties.

In fact, the rationale for the revolving door is explicitly recognised in the NTMCC. Clause 8.8 provides that 'Ministers are not to use their position improperly to gain a direct or indirect personal advantage for themselves ... not enjoyed by the general public'. However, the NTMCC *fails* to recognise the extent to which this positional advantage extends into future dealings.

Indeed, the NTMCC imposes only a six-month post-employment prohibition in relation to a Minister's portfolio responsibilities held in the last six months of their appointment. This six month prohibition is grossly insufficient to allow for the dilution of influence and connections of Ministers. Global best practice sets the prohibition period at five years,¹⁸ and in other Australian jurisdictions it varies between 12 months and 24 months.¹⁹

The scope of any post-employment separation period should be broader than matters in respect of which a Minister had 'portfolio responsibilities', insofar as influence and networks do not develop only in relation to matters that fall under 'portfolio responsibilities'.

Furthermore, rather than applying only to Ministers, any post-employment separation periods should apply to government and opposition representatives, advisors, and senior public servants, in respect of official dealings. While tailoring the scope of 'official dealings' for non-Ministers and opposition members is complex, it should likely apply to dealings in which a non-Ministerial member had contact in their capacity as *Chair or Deputy Chair* of a Parliamentary Committee. While it would usually be suggested that coverage apply to *all members'* dealings on a Parliamentary Committee, the small size and extremely broad coverage of NT Parliamentary Committees make this untenable.²⁰

Given that the true ambit of 'official dealings' is rather elusive, especially for non-Ministers and opposition members, best practice elsewhere suggests that while a relatively long separation period should be initially imposed, individuals affected should be able to apply for conditional exemptions to or decreases in the separation period.

¹⁸ *Lobbying Act*, RSC 1985, c C-44, s 10.11(1).

¹⁹ See *Lobbyist Code of Conduct (SA)* s 7.1-3; *Lobbying of Government Officials Act 2011 (NSW)* s 18; *The Victorian Government Professional Lobbyist Code of Conduct (Vic)* s 7; *Integrity Act 2009 (Qld)* s 70; *Lobbying code of conduct (Tas)* s 7; *Integrity (Lobbyists) Act 2016 (WA)* s 14(2)(b); *Lobbying Code of Conduct (Cth)* s 11.

²⁰ For example, the current Commonwealth Parliament has 67 active committees shared between 227 seats in Parliament, the NT Parliament currently has only 9 committees shared between 25 seats in Parliament. Unlike Commonwealth Parliamentary Committees, the NT Parliamentary Committees are extremely broad in scope and thus confining 'official dealings' to the work of the Committee would be extremely difficult.

Clause 9.3 of the NTMCC provides that:

'Ministers in the NT Government are likely to hold multiple portfolios covering a broad range of responsibilities including in areas which would, elsewhere in Australia, be municipal responsibilities. It is acknowledged that due to the size of the Northern Territory, opportunities for roles completely unrelated to government are limited. On leaving office, Ministers should be conscious of the potential for allegations of conflict of interest or controversy to arise in the event that they take up other employment in an area over which they have held ministerial responsibility. In particular, former Ministers should consider the likelihood of there being an appearance of their gaining personal financial or other benefits from knowledge gained while they were a Minister, or opportunities for criticism of their misusing contacts made in that role for their personal gain. The extent to which a proposed employer has a contractual or other financial relationship with the NT Government will be a relevant consideration in a former Minister reaching a decision on an appropriate course of action. In deciding to accept a particular offer of post-ministerial employment, former Ministers should be mindful of their standing in the community, and continuing responsibility to uphold public confidence in the Northern Territory's system of government.'

This essentially unenforceable recommendation is not sufficiently robust. It is unduly concerned with the *appearance* rather than *reality* of excess post-separation influence and makes no meaningful attempt to delineate or define what might be within the ambit of Ministerial responsibilities. While many Ministers have multiple portfolio responsibilities, the claim that these are akin to municipal responsibilities is dubious given that, unlike the ACT, the NT *does* devolve many of its powers to local government.²¹

The NT should close the revolving door by imposing a lengthy, proportionate and enforceable post-separation employment prohibition.

6. Parliamentary oversight

The Parliament is the ultimate integrity institution, and its government oversight and scrutiny function is the essence of responsible government. Parliamentary oversight is thus critical to both the formulation and ongoing regulation of lobbying in the NT. Despite this, the NT — like Queensland and the ACT — is a unicameral Parliament with no upper house. With no house of review, this means that the role of the parliamentary opposition is even more critical to responsible government in the NT.²² Further, unlike the ACT, NT elections are characterised by large swings — meaning there has *never* been a minority government since self-government in 1978. This means that the opposition has historically never been able to make credible threats to the passage of legislation, and thus the government has little reason to listen.

²¹ See, eg, *Local Government Act 2019* (NT).

²² Grace Concannon, 'Committees in a Unicameral Parliament: Impact of a Majority Government on the ACT Legislative Assembly Committee System' (2013) 28(1) *Australasian Parliamentary Review* 57, 58-9.

It therefore falls on other procedural mechanisms to afford parliamentary oversight. The most critical of these is the system of parliamentary committees. Parliamentary committees provide select groups of parliamentarians, both government and opposition, the chance to interrogate and scrutinise proposed bills and the behaviour of the executive government. Committees also play crucial roles in promoting debate, facilitating public engagement and gathering evidence on matters of public importance. While committees in unicameral systems are understandably less effective during majority governments,²³ they are nevertheless critical.

Regrettably, on the first day of its new term in November 2020, the NT Government abolished the Parliament's cross-party Legislation Scrutiny Committee.²⁴ This committee had subsumed the previous social and economic policy committees — which were themselves introduced by Labor with the claim that they would promote 'open and transparent government'.²⁵ Despite being the central avenue for parliamentary oversight, the NT's remaining parliamentary committees are firmly under government control both in terms of raw numbers, and the identity of the Chair of the Committee who plays a key role in directing proceedings and usually retains a casting vote. For example, of the nine committees currently constituted:

- all have at least 50 per cent government membership;
- all Chairs are government members; and
- all Deputy Chairs are government members, with the exception of an independent Deputy Chair of the Standing Orders Committee.

For a Parliament in which 14 of the 25 members are members of the current government, the allocation of chairs and composition is not reflective of Parliament's composition. This is furthered by the fact that nine of Labor's members are ministers who by convention should not sit on parliamentary committees — leaving 16 non-executive government members. Nevertheless, despite the fact the executive should not be left to scrutinise itself, five of the nine Ministers sit on Parliamentary Committees — including the deputy Chief Minister and the Attorney-General.²⁶ No doubt the sheer low number of non-minister parliamentarians also makes managing such a workload difficult.

These parliamentary shortcomings undoubtedly affect the quality of the NT's governance and thus lobbying regulation. Partisanship should not detract from parliamentary procedure. Accordingly, the Standing Orders should be amended to provide explicitly that Ministers may not sit on committees, and that committee composition — including chairs and deputy chairs — should be reflective of non-executive government members.

²³ Ibid 58.

²⁴ Kate Ashton, 'Labor Government Scraps Policy Scrutiny Committees from NT Parliament', *ABC News* (online 20 October 2020) <<https://www.abc.net.au/news/2020-10-20/nt-government-scraps-legislation-scrutiny-committees/12795142>>.

²⁵ Ibid.

²⁶ Deputy Chief Minister Nicole Manison sits on the ICAC Committee, Minister Ngaree Ah Kit sits on the Standing Orders Committee and Members Interests Committee, Attorney-General Chanton Paech sits on the Standing Orders Committee and Members Interests Committee; Ministers Eva Lawler, Kate Worden and Selena Uibo all sit on the House Privileges Committee.

Conclusion

The Northern Territory lobbying regime lacks all of the hallmarks of a robust regime. It is the weakest of all Australian lobbying regimes and makes no real attempt to eliminate undue influence or promote integrity in government decision-making. Figure 1 details the gravity of NT's policy failures in this regard. Without reform, Northern Territorians cannot trust that decisions made by their government are made exclusively in the public interest.

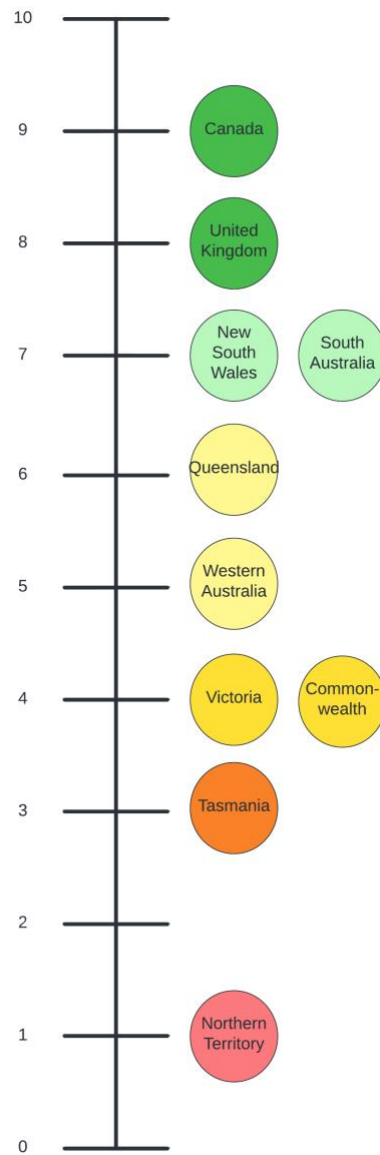


Figure 1: Lobbying Scorecard

Case study: the Middle Arm Sustainable Development Precinct

Preface

The below case study on the Middle Arm Sustainable Development Precinct illustrates just how much more knowledge the public might have about the exercise of public power under a best-practice lobbying regime. All of the matters we detail in the below case study are perfectly acceptable under the current rules in the Northern Territory, and there is no suggestion that any of the individuals referred to in this study engaged in any wrongdoing or conducted themselves improperly. Rather, this study exemplifies the way in which public decision-making might be perceived as not in the public interest, thereby undermining public trust.

Introduction

In March 2012, after the release of the Commonwealth's Draft Energy White Paper (which ultimately recommended further development of Australian gas markets), then-Chief Minister of the Northern Territory ('NT'), Paul Henderson, outlined his vision for a gas manufacturing hub in Darwin:²⁷

Australia's manufacturing industry is in decline and the Australian Government has an opportunity to facilitate the establishment of a whole new gas-based manufacturing industry in Northern Australia.²⁸

Henderson's plans for such a petrochemical hub were reportedly developed in association with Darwin-born chemical industry magnate Andrew Liveris.²⁹ While Henderson's Government was defeated in the 2012 election, 10 years later in 2022 the NT government announced the creation of the Middle Arm Sustainable Development Precinct ('MASDP').

The MASDP, located in Darwin Harbour, is described by the NT government as seeking to 'capitalise on the [NT's] access to natural gas and renewable energies to grow manufacturing and value-adding jobs while supporting economic growth'.³⁰ Supporters of the precinct claim it will 'significantly increase Darwin's capacity, capability and economic output',³¹ and serve as a globally important petrochemical export hub.³² Conversely, critics

²⁷ Department of Resources, Energy and Tourism, *Energy White Paper 2012: Australia's Energy Transformation* (Report, October 2012) ix.

²⁸ Matt Cunningham, 'Unprecedented Crisis Could Also Bring Opportunity to a Struggling Northern Territory', *NT News* (online, 11 April 2020) <<https://www.ntnews.com.au/news/opinion/unprecedented-crisis-could-also-bring-opportunity-to-a-struggling-northern-territory/news-story/3818e50c05bc3e7e88160e3689c8a657>>.

²⁹ Ibid.

³⁰ NT Department of Infrastructure, Planning and Logistics, *Project Overview: Middle Arm Sustainable Development Precinct* (Fact Sheet, n.d.)

<https://dipl.nt.gov.au/_data/assets/pdf_file/0005/1103756/masdp-project-overview-factsheet.pdf>.

³¹ Nicole Conroy (LinkedIn, July 2022) <<https://www.linkedin.com/posts/nicole-conroy-72b62156-middle-arm-sustainable-development-precinct-activity-6964417300967936000-LFxs/>>.

³² 'Middle Arm Sustainable Development Precinct', *Land Development Corporation* (Web Page) <<https://landdevcorp.com.au/project/middle-arm-sustainable-development-precinct/>>.

have argued that the MASDP would significantly increase Australia's carbon emissions,³³ and pose significant environmental and health risks.³⁴ For example, prominent environmental scientist Michael Petroni has reported that 'air pollution and industrial accident risk from the MASDP pose significant human health threats to residents of [Darwin].'³⁵ He further found that these health effects would result in \$75 million in additional health impacts, up to 15 premature deaths per year and a 75 per cent increase in greenhouse gas emissions 'levelling an annual social cost of \$310 million'.³⁶

Notwithstanding these grave social and environmental risks, there has not yet been a public cost benefit analysis nor any meaningful public consultation in respect of the MASDP.³⁷ Given that the Commonwealth Government has committed substantial taxpayer funds towards the MASDP, these absences are striking.

Commonwealth funding commitments

The Commonwealth has contributed significant funding to the MASDP, and to the development of energy and petrochemical infrastructure in the NT more generally.

Most notably, the Albanese Government in 2022 shored up the earlier Morrison Government's commitments to Commonwealth funding of the MASDP.³⁸ In the October 2022-23 budget, the Government committed to '\$1.9 billion in equity investment for the development of the [MASDP]'.³⁹ Along with the substantive environmental and social criticism of the project, the investment has been criticised for its 'off budget' nature.⁴⁰

Consistent with the, until recently, secret Memorandum of Understanding on gas industry collaboration between the Commonwealth and the Northern Territory, a number of large Commonwealth grants were both provided and announced after 2020:⁴¹

³³ 'What's Going on with Middle Arm', *Australian Youth Climate Coalition* (Web Page) <<https://www.aycc.org.au/middle-arm>>.

³⁴ 'Environment Groups Slam Middle Arm Budget Announcement, Calling it a Fossil Fuel Subsidy for a Petrochemical Precinct', *Environment Centre NT* (Media Release, 17 October 2022) <https://www.ecnt.org.au/environment_groups_slam_middle_arm_budget_announcement_calling_it_a_fossil_fuel_subsidy_for_a_petrochemical_precinct>.

³⁵ Michael Petroni, *Expert Opinions Related to Potential Environmental and Human Health Impacts of the Middle Arm Sustainable Development Precinct as well as the Adequacy of the Draft Terms of Reference for Strategic Assessment* (Report, 9 June 2022) <https://assets.nationbuilder.com/ecnt/pages/652/attachments/original/1660190794/MASDP_Expert_Report_Michael_Petroni_%28003%29.pdf?1660190794> 6.

³⁶ *Ibid.*

³⁷ 'Budget Boost for Northern Territory's Middle Arm Precinct', *Petroleum Australia* (Web Page, 18 October 2022) <<https://petroleumaustralia.com.au/projects/budget-boost-for-northern-territorys-middle-arm-precinct/>>.

³⁸ See Adam Morton and Rafqa Touma, 'Labor Urged to Axe \$1.9bn in Zombie Fossil Fuel Subsidies Promised by the Coalition', *The Guardian* (online, 20 September 2022) <<https://www.theguardian.com/australia-news/2022/sep/19/labor-urged-to-axe-19bn-in-zombie-fossil-fuel-subsidies-promised-by-the-coalition>>.

³⁹ Commonwealth of Australia, *Budget October 2022-23: Budget Measures: Budget Paper No 2* (Budget Statement, 25 October 2022) <https://budget.gov.au/2022-23-october/content/bp2/download/bp2_2022-23.pdf> 163.

⁴⁰ John Kehoe, 'Off Budget Spending Expanded for NT Energy Hub', *Financial Review* (online, 27 February 2023).

⁴¹ *Memorandum of Understanding for Collaboration to Support the Development of the Northern Territory Gas Industry between the Commonwealth of Australia and the Northern Territory of Australia* <[MOU](#)>.

- The Morrison government's 2022 budget *Energy Security and Regional Development* committed to '\$300 million to support low emissions Liquefied Natural Gas (LNG) and clean hydrogen production at Darwin',⁴² including \$130 million to invest in carbon capture and storage in the Bayu-Undan gas fields (since removed);⁴³
- The same budget specifically allocated \$200 million to 'further develop the Middle Arm Sustainable Development Precinct (since removed)';⁴⁴
- In January 2021, the Coalition invested \$173 million of Commonwealth funds into accommodating infrastructure for the Beetaloo Sub-Basin,⁴⁵ after having announced \$50 million in funding to accelerate exploration and production;⁴⁶
- On 23 February 2022, Co-Minister for Resources Keith Pitt announced three grants totalling \$19.4 million to support gas exploration in the Beetaloo Sub-Basin;⁴⁷
- Even now the Commonwealth government provides intermittent grants to 'undertake exploration drilling programs in the Northern Territory'.⁴⁸

These historic and current commitments of Commonwealth funds to gas developments in the NT appear to have followed the recommendation of the Morrison Government's National COVID-19 Coordination Commission's Manufacturing Taskforce, led by Andrew Liveris, that the nation embark upon a so called 'gas-fired recovery'.⁴⁹

⁴² The Hon Barnaby Joyce MP, *Regional Ministerial Budget Statement 2022-23: A Secure Future for Regional Australia* (Budget Statement, 29 March 2022) <https://parlinfo.aph.gov.au/parlInfo/download/publications/tabledpapers/77817a9f-044f-4541-80a8-71754f88f1f9/upload_pdf/Regional-ministerial-budget-statement-2022-23.pdf;fileType=application%2Fpdf#search=%22publications/tabledpapers/77817a9f-044f-4541-80a8-71754f88f1f9%22> 195.

⁴³ 'Globally Significant Carbon Capture and Storage Project a Step Closer', *Santos* (Web Page, 9 March 2022) <<https://www.santos.com/news/globally-significant-carbon-capture-and-storage-project-a-step-closer/>>; Nicholas Hynes and Lauren Roberts, 'Prime Minister Scott Morrison Promises \$300 million for Northern Territory Energy Industry, \$14 million to Fight Crime', *ABC News* (online, 24 April 2022) <<https://www.abc.net.au/news/2022-04-24/alice-springs-darwin-federal-election-2022-promises/101011700>>.

⁴⁴ The Hon Barnaby Joyce MP, *2022-23 Budget Delivers \$7.1 Billion to Turbocharge our Regions* (Media Release, 29 March 2022) <<http://web.archive.org/web/20220318083258/https://minister.infrastructure.gov.au/joyce/media-release>>.

⁴⁵ Steve Vivian, 'Commonwealth Tips Another \$173 Million into Beetaloo Basin Gas Reserve, Insists Emissions Targets on Track', *ABC News* (online, 14 January 2021) <<https://www.abc.net.au/news/2021-01-14/federal-government-road-funding-props-up-beetaloo-development/13057974>>.

⁴⁶ Angela Macdonald, 'Explorers Line up for \$50m Beetaloo Drilling Funds', *Financial Review* (online, 17 December 2020) <<https://www.afr.com/companies/energy/explorers-line-up-for-50m-beetaloo-drilling-funds-20201217-p5609a>>; GrantConnect, *Archived Grant Opportunity View: GO4630* <<https://www.grants.gov.au/Go/Show?GoUId=711d3f3f-5987-473d-b83f-f1559a27cc2b>>.

⁴⁷ The Hon Kieth Pitt MP, *Government Getting on with the Job of Gas Exploration* (Media Release, 23 February 2022) <<https://www.minister.industry.gov.au/ministers/pitt/media-releases/government-getting-job-gas-exploration>>.

⁴⁸ Business.gov.au, Australian Government, *Funding to Undertake Exploration Drilling Programs in the Northern Territory* (17 January 2023) <<https://business.gov.au/grants-and-programs/Geophysics-and-Drilling-Collaborations-Program-NT>>.

⁴⁹ The Hon Angus Taylor MP, *Gas-fired Recovery* (15 September 2020) <<https://www.minister.industry.gov.au/ministers/taylor/media-releases/gas-fired-recovery>>.

National COVID-19 Coordination Commission ('NCCC')

The NCCC was formed on 25 March 2020 to 'coordinate advice to the Australian Government on actions to anticipate and mitigate the economic and social effects of the global coronavirus pandemic'.⁵⁰ Seeking to bring together senior members of the executive government with industry leaders, the NCCC consisted of:

- Neville Power — Former CEO of Fortescue Metals Group;
- David Thodey — Chair of the CSIRO and former CEO of Telstra;
- Jane Halton — Former Secretary of the Department of Finance and Department of Health;
- Paul Little — Former Managing Director of Toll Group;
- Catherine Tanna — Managing Director of EnergyAustralia;
- Philip Gaetjens — Secretary of the Department of Prime Minister and Cabinet;
- Mike Pezzullo — Secretary of the Department of Home Affairs.

The NCCC also consisted of three attached 'taskforces' concerning manufacturing, charity and philanthropy, and industrial relations.

In response to its establishment, concerns were raised around the NCCC's accountability, transparency and membership. For example, the NCCC lacked any legislative underpinning and thus any parliamentary oversight. With respect to transparency, the NCCC did not disclose information relating to its operations, and sought the protection of Cabinet immunity from freedom of information requests.⁵¹

⁵⁰ The Hon Scott Morrison MP, *Media Release: Prime Minister* (Media Release, 25 March 2020 (archived version)) <<https://web.archive.org/web/20200325101852/https://www.pm.gov.au/media/national-covid-19-coordination-commission>>.

⁵¹ Elizabeth Hicks, *Private Actors & Crisis: Scrutinising the National Covid-19 Commission Advisory Board* (Governing During Crises Policy Brief No 4, 5 August 2020) <https://government.unimelb.edu.au/_data/assets/pdf_file/0006/3457725/GDC-Policy-Brief-4_Private-Actors-and-Crisis_final.pdf>.

⁵³ Jamie Smyth, 'Coronavirus Shortages Prompt Australia to Bring Manufacturing Home', *Financial Times* (online, 15 April 2020) <<https://www.ft.com/content/04ac783d-8ced-4e66-9437-78b607cbd8d4>>.

The NCCC Manufacturing Taskforce

Soon after the establishment of the NCCC, Andrew Liveris was appointed to lead the manufacturing taskforce.⁵³ Throughout Liveris' time on the taskforce, the lobbying firm Dragoman — which listed Liveris as the Chairman of its 'International Advisory Board'⁵⁴ — reportedly provided pro bono support to either the NCCC (as Dragoman reportedly claims) or to Liveris (as the NCCC reportedly claims).⁵⁵

Dragoman is directed by Tom Harley, former Chairman of the Liberal Party think-tank the Menzies Research Centre and Vice-President of the party's federal branch.⁵⁶ Harley also served as Non-Executive Chairman of Dow Chemical Australia and as Senior Advisor to the Dow Chemical Global Leadership Team.⁵⁷

While the NCCC and manufacturing taskforce were expounding the benefits of a 'gas-fired' recovery, the Northern Territory Economic Reconstruction Commission ('NTERC') was preparing to advise the NT Government on how to accelerate its economic recovery, with the stated goals of job creation, investment attraction, industry support, and unleashing the region's potential.⁶²

⁵⁴ 'The Team', *Dragoman* (Web Page, 2023) <<https://www.dragomanglobal.com/the-team>>.

⁵⁵ Christopher Knaus, 'PM's Taskforce Backing Gas Expansion Received Advice from Lobbying with Saudi Links', *The Guardian* (online, 20 September 2020) <<https://www.theguardian.com/australia-news/2020/sep/20/pms-taskforce-backing-gas-expansion-received-advice-from-lobbying-firm-with-saudi-links>>.

⁵⁶ 'Tom Harley', *Liveris Academy* (Web Page, n.d.) <<https://liveris-academy.uq.edu.au/tom-harley>>.

⁵⁷ (n 27)

⁶² Territory Economic Reconstruction Commission, *A step Change to Win Investment and Create jobs* (Final Report, November 2020) <https://ntrebound.nt.gov.au/_data/assets/pdf_file/0020/952301/terc-final-report.pdf>.

Northern Territory Economic Reconstruction Commission

The Northern Territory Economic Reconstruction Commission ('NTERC') originally comprised then-current and former senior members of the business community, elected representatives and public servants. These included:

- Andrew Liveris (Co-Chair);
- Paul Henderson (Co-Chair) — former NT Chief Minister 2007-12 and current lobbyist for 'Bespoke Territory'
- Gail Kelly — former banking senior executive;
- Dr Martin Parkinson — former secretary of the Treasury and Department of Prime Minister and Cabinet;
- Professor Mick Dodson — then-NT Treaty Commissioner;
- Gary Higgins — former NT Parliamentarian and Minister;
- Romilly Madew — then-CEO of Infrastructure Australia;
- Eytan Lenko — then-chair of Beyond Zero Emissions.⁶³

The NTERC produced its first report to the Chief Minister in July 2020.⁶⁴ In its final report in November 2020, the Commission recommended that the 'Territory continue to partner with the Australian Government and industry on gas developments'.⁶⁵ It further recommended that 'the Territory rapidly progress manufacturing opportunities in low emissions petrochemicals, renewable hydrogen, minerals processing, and food-related processing. Master plans to target low emissions design and electrification, bringing the Territory's resources, renewables and gas assets together'.⁶⁶

Documents obtained via freedom of information establish that around six weeks prior to the delivery of the final report, a meeting was scheduled between NT Deputy Chief Minister Nicole Manison (who holds portfolios including Mining and Industry), Paul Henderson and Mike Burgess.⁶⁷ Whether the meeting proceeded, and its purpose, remain unknown.

Six months later, in early July 2021, the NT's Department of the Chief Minister and Cabinet awarded Dragoman a \$95,975 contract for a project described as 'Consultancy - Political,

⁶³ 'Commission Members', *Northern Territory Government* (Web Page, 23 January 2021) < <https://web.archive.org/web/20210123130135/https://ntrebound.nt.gov.au/the-commission/commission-members>>.

⁶⁴ See Territory Economic Reconstruction Commission, *First Report* (Report, July 2020) < https://ntrebound.nt.gov.au/_data/assets/pdf_file/0007/908314/terc-first-report.pdf>.

⁶⁵ (n 33) 15.

⁶⁶ (n 33) 17.

⁶⁷ FOI document – calendar invitation.

Policy and Commercial Intelligence Support'.⁶⁸ Documents obtained via freedom of information establish that the purpose of the consultancy was to 'provide deep political insight, analysis and strategic guidance that will inform the formulation of a strategy to influence industry and the Commonwealth Government and gas industry to support the establishment of gas-based manufacturing in the NT'.⁶⁹ On advice from Bespoke that it was 'not well placed to provide the services', and referral by Bespoke to Dragoman, the Department undertook additional research and reported that 'further advice was sought from respected advisers (e.g. Andrew Liveris, Territory Economic Reconstruction commission, and Co-chair); the capability and suitability of Dragoman to deliver the requires services was confirmed. Through this consultation, no further alternatives were recommended'.⁷⁰

Impact of a strong lobbying regime on these events

It is helpful to consider our best-practice lobbying principles as applied to these events. Again, there is no suggestion of misconduct of any kind by any individual referred to: our concern relates to the weaknesses of a system which allows circumstances permitting perceptions of potential conflicts of interest to arise.

Who would be a registered lobbyist?

Under the broad definition of 'lobbyist' and 'lobbying' we propose, Andrew Liveris (in his capacity as board member of Dragoman), Tom Harley and Paul Henderson would all be considered lobbyists for the purposes of the regime. They would therefore have to maintain their names on the proposed Lobbying Register for the public to view.

What more might we know?

In an ideal lobbying regime, at both the Territory and Commonwealth level, meetings between registered lobbyists and Ministers would be required to be disclosed in ministerial diaries. These disclosures would include specific details of the nature of the meeting and the conversation matter.

The contact between Andrew Liveris, Tom Harley and Paul Henderson in their capacity as theoretical registered lobbyists (not considering Liveris' and Henderson's roles in both the NCCC and NTERC) would require that the details of these meetings be disclosed. This transparency would allow for scrutiny by both the public and Parliament.

For example, on 15 October 2020, around six weeks before the NTERC final report was released, Paul Henderson and Mike Burgess had a meeting scheduled with the NT Deputy Chief Minister Nicole Manison (who holds portfolios including Mining and Industry).⁷¹ On 25 November 2021, Tom Harley also sought a meeting with Manison (whether these meetings went ahead, and their detail, remain unknown).⁷² After Andrew Liveris' terms on the NCCC

⁶⁸ 'Quotations and Tenders Online: Tender No 21-0697', *Northern Territory Government* (Web Page, n.d.) <<https://tendersonline.nt.gov.au/Tender/AwardedDetails/19321>>.

⁶⁹ Project Specific Procurement Plan prepared by Jason Howe, 2 June 2021, at 2 (document identification number 21-0697).

⁷⁰ Ibid.

⁷¹ FOI document – calendar invitation.

⁷² See 'FOI 23-068' <<https://www.infrastructure.gov.au/sites/default/files/documents/foi--23-068.pdf>> 4.

and NTERC lapsed, Chief Minister Michael Gunner reported that he was to meet with him to 'discuss developing Middle Arm into a globally competitive, sustainable industrial precinct' in April 2022.⁷³

Proactive diary disclosure would also see other known meetings disclosed to the public. While they occurred after the funding had been allocated, their existence should also be public knowledge. For example, Tom Harley sought a meeting with the federal Resources Minister after they had recommitted to the MASDP in July 2022,⁷⁴ and eventually scheduled a meeting with a senior advisor.⁷⁵ Later, on 20 October 2022, Energy Minister Chris Bowen was scheduled to meet with the Worley Board.⁷⁶

We note that it is, of course, possible that there are meetings between public officials and theoretical registered lobbyists which remain unknown to the public in the absence of proactive diary disclosure,

⁷³ 'Driving a \$40 Billion Economic by 2030', *NT Newsroom* (Media Release, 11 April 2022)

<https://newsroom.nt.gov.au/article/_nocache?id=79117a973a020ad5e79d9ccee8302f5>

⁷⁴ See 'FOI 23-068' <<https://www.infrastructure.gov.au/sites/default/files/documents/foi--23-068.pdf>> 1-3.

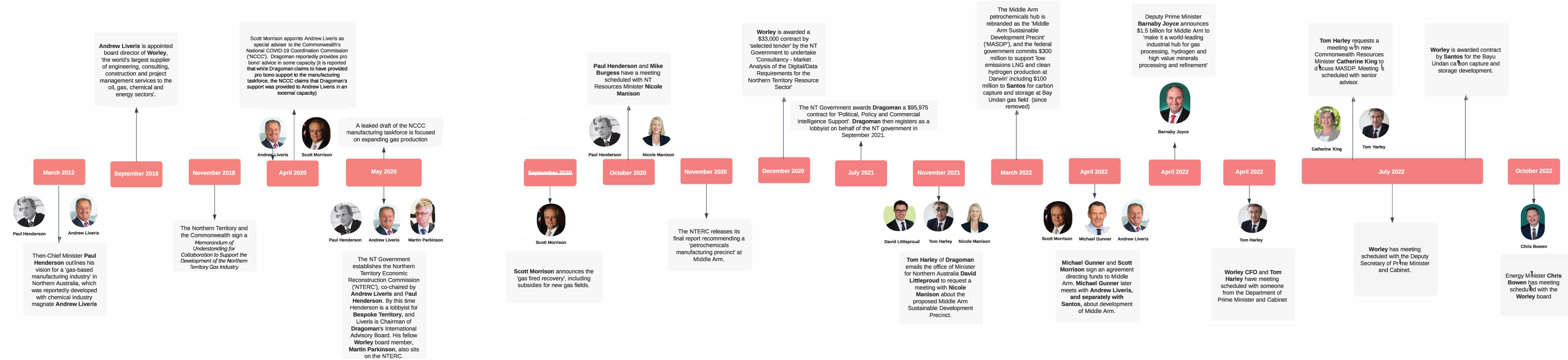
⁷⁵ *Ibid* 1.

⁷⁶ See Department of Climate Change, Energy, the Environment and Water, '72409' <<https://www.dcceew.gov.au/sites/default/files/documents/72409.pdf>> 21.

The case for reforming the NT lobbying regime: Middle Arm case study

There is no suggestion that any of the individuals referred to in this case study engaged in any wrongdoing or conducted themselves improperly. Rather, this study exemplifies the way in which public decision-making might be perceived as not in the public interest, thereby undermining public trust.

This timeline is to be read alongside the report 'In whose interest?' and is not for separate publication



The case for reforming the NT lobbying regime: Middle Arm relationships map

There is no suggestion that any of the individuals referred to in this study engaged in any wrongdoing or conducted themselves improperly. Rather, this study exemplifies the way in which public decision-making might be perceived as not in the public interest, thereby undermining public trust. This relationships map is to be read alongside the report *'In whose interest'* and is not for separate publication

