FABIANO CANGELOSI

[redacted]

14 July 2022

Chief Executive Officer
Integrity Commission Tasmania
GPO Box 822
HOBART TAS 7000

By email only to prevention@integrity.tas.gov.au

Dear Mr Easton,

RE: SUBMISSION, REFORMING OVERSIGHT OF LOBBYING IN TASMANIA

This correspondence is my submission on the consultation paper, *Have Your Say: Reforming Oversight of Lobbying in Tasmania*.

Political discourse, in general terms, is fundamental to representative democracy.

Yet, lobbying activity, a species of political discourse, may be inimical to representative democracy.

This because lobbying, particularly by third-party lobbyists, generally occurs to benefit vested interests; and because it occurs in private, it envelops in secrecy the process by which public decisions are made.

The challenge for reformers is to acknowledge that not all political discourse is equal, just as not all lobbying is equal.

Insidious forms of lobbying activity, which may subvert the Australian system of representative democracy, require onerous regulation.

The current model

The current regulatory model for lobbying in Tasmania takes the form of encouraging voluntary compliance by people who are lobbied, by discouraging them from meeting with unregistered third-party lobbyists.

This model is not equal to the dangers presented by lobbying activity to the healthy functioning of a democracy with a large public administration. It does almost nothing to bring such lobbying activity into the eye of the public.

My view is that a best-practice system for the regulation of third party lobbying is required in Tasmania. It must address:

(1) the legislative and regulatory framework, to make compliance mandatory, with breaches able to be addressed by way of civil and criminal penalties;

(2) the expansion of the framework to a broader group of people who are, in fact, lobbied, including all members of parliament, State Service employees, and employees or officers of private organisations discharging a public function;

(3) standards of conduct applicable to both lobbyists and lobbied people, the centrepiece of which must be a freely accessible, detailed register that is updated in close to real-time, of all lobbying activity carried out by registered lobbyists.

I do not consider that an expansion of this framework beyond third-party lobbyists is necessarily desirable.

This is not to say that other forms of lobbying may nor be problematic; rather, there is need for caution when addressing lobbying by non-third party lobbyists, lest the regulatory exercise stifle legitimate political discourse.

I treat the subject of other forms of lobbying as beyond the scope of this submission.

I develop several of these arguments in more detail below.

People who are lobbied

I consider the current *Lobbying Code of Conduct* to be overly narrow in limiting its application to Ministers, Parliamentary Secretaries, MPs of a party constituting the Executive Government, Ministerial Advisers, and Heads of Government.

The Legislative Government is the fundamental branch of government that determines the composition of the Executive Government of the day. As a whole it represents the entire legislative competence of the State of Tasmania.

It is an egregious oversight that the current *Lobbying Code of Conduct* ignores the potential for lobbying activity to undermine the democratic processes of the State's legislative capacity.

Similarly, the potential for lobbying activity to influence the formulation and administration of government policy requires the expansion of the application of lobbying regulation to all employees of the State Service and employees or officers of private bodies performing public functions.

Whilst it stands to reason that the greater the responsibility of the functionary, the greater the potential for lobbying activity to exercise influence on them.

It is neither possible nor desirable to be proscriptive about the type of role that must be played by an employee of the State Service or a private body serving a public function, or its hierarchical position.

Standards of conduct

As was noted by the OECD in *Transparency and Integrity in Lobbying* (2013), lobbying is not a unilateral process where the person who is lobbied sits entirely passive and is influenced by the lobbyist.

It follows that any regulation that only addresses the standards of conduct of lobbyists necessarily is leaving unregulated the other, equally important, half of the lobbying process.

Standards of conduct applicable to both lobbyists and lobbied persons should be mandatory, and should be supported by:

(1) a regime of both civil and criminal penalties, depending on the seriousness of any breaching conduct;

(2) the ability of a sentencing court to make an order prohibiting a person from engaging in lobbying for a specific time period, or indefinitely.

As to the content of such standards of conduct, I particularly note OECD recommendations.

Without repeating all of them, I consider that mandatory, close to real-time reporting of all lobbying activity, to a freely accessible online database, best supports transparency and accountability in the lobbying process.

To be effective, such reporting would need to include information such as the identity of the lobbyist, the subject matter of lobbying activities and outcomes sought, the ultimate beneficiary of the lobbying, the institution or public official targeted, the type and frequency of the lobbying, documentation shared with the lobbied person, lobbying expenditure, sources of funding, political contributions, prior roles held by the lobbyist with the lobbied person (including family members), and public funding received.

The definition of "lobbying activity"

The Code of Conduct presently defines lobbying activity 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."*

This definition, which is serviceable, is then subject to a number of exemptions.

In my view the only current exemption to the definition of "lobbying activity" that ought to be maintained relates to statements made in a public forum.

Any communication otherwise made should be regarded as registrable lobbying activity, regardless of its frequency or type.

Compliance

I consider that a single Act of the Tasmanian Parliament is required to accomplish the following objectives:

(1) put the regulation of lobbying activity on an unambiguous, statutory footing;

(2) require the registration of all third-party lobbyists;

(3) mandate compliance with regulations and a Code of Conduct prescribed under the Act;

(4) enact a civil penalty regime for breaches of the Code of Conduct;

(5) enact offence provisions for serious breaches of the Code of Conduct;

(6) empower the Integrity Commission with an investigative function including coercive powers to obtain documents and information;

(7) empower the Integrity Commission with a prosecutorial function for serious breaches of the Code of Conduct;

(8) permit a court that sentences a person for a serious breach of the Code of Conduct to ban the person from registration as a lobbyist for a fixed term or until further order;

(9) make harmonious the role of the Integrity Commission under the Act with its functions under the *Integrity Commission Act 2009*;

(10) make harmonious responsibilities of State Service employees under the Act with the *State Service Act 2000*.

Specific proscriptions

I now turn to matters that ought to be subject of specific proscription.

An obvious area where conflict of interest arises is where third-party lobbyists hold an official or de facto position within a registered political party or private organisation that exercises a public function.

Such a situation gives rise to a potential blurring of responsibilities, at best. At worst, it permits a lobbyist control of part of the machinery of representative democracy.

There is no reason at all for such a blurring of responsibilities to be permitted. In my view it ought to be prohibited.

Another obvious problem arises where a person who has had a public function as a member of parliament, State Service employee, or employee or officer of a private body with public functions, seeks to become a third-party lobbyist.

This situation is notorious and is regulated in other Australian jurisdictions.

In my view, a member of parliament, State Service employees, and employees or officers of a private organisation that exercises a public function, ought to be banned from registration as a lobbyist for 8 years following the cessation of their role.

Permitting the payment of success fees to lobbyists presents an incentive to engage in conduct that is either already illegal or unethical, or a breach of future standards of conduct.

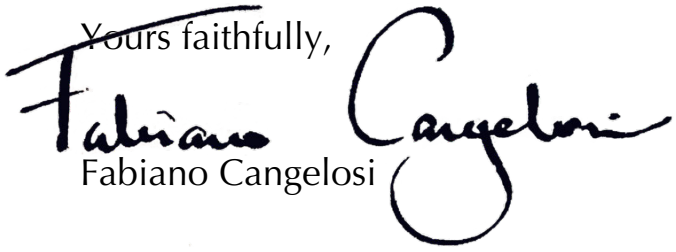
The payment of success fees ought to be banned.

Conclusion

It is to be hoped that there is political will to embark on significant reforms to the regulation of lobbying in Tasmania.

If I can be of any further assistance including clarifying any aspect of these submissions I would be pleased to hear from you.

Yours faithfully,



Fabiano Cangelosi