

# **Submission**

By



to the

## **Government Administration Select Committee**

on the

## **Lobbying Disclosure Bill**

**5 October 2012**

PO Box 1925  
Wellington  
Ph: 04 496 6555  
Fax: 04 496 6550

# **LOBBYING DISCLOSURE BILL**

BusinessNZ welcomes the opportunity to submit on this private member's bill and would request the opportunity to appear before the Select Committee.

## **RECOMMENDATION**

1. That the bill not proceed

## **DISCUSSION**

1. While it is understood that the intention behind the bill's introduction is to subject the lobbying process to greater transparency, in practice the bill is more likely to compromise the parliamentary process while introducing time-consuming, bureaucratic procedures. Governments of all shades, and their members of parliament, frequently require information and advice from others with a better grasp of the likely consequences of something they are planning to do or to undo than they – and often their officials - have themselves. Requiring such persons (the term is used loosely to cover both individuals and organisations) to file a return with the Auditor-General would be to foster a bureaucratic nightmare. Does, for example, talking to a Member of Parliament in the street constitute a communication technique that must be identified in terms of clause 7's subclause (7)? Is an invitation to a public office holder to speak to a particular group whose members will then proffer opinions of their own a communication technique? Must persons in such situations be registered? Those are merely two situations the proposed legislation might catch.
2. Nor is lobbying the only reason for speaking to Members of Parliament. Quite often business representatives visit Government Ministers to alert them to matters such as company investment plans for New Zealand or to programmes to be implemented for charitable purposes. Such visits would undoubtedly end were the bill to be passed. They would be simply seen as not worth the effort.
3. Businesses also try to work constructively with opposition parties. Here, too, passing the bill would have an inhibiting effect.
4. Nor is there any particular virtue in being an unpaid, as compared with a paid, lobbyist. In either case, the intention is to influence. The recent miners' march on Parliament is a case in point. Though unsuccessful, the miners were nothing if not unpaid lobbyists.
5. Similarly, union officials and those engaging in non-commercial lobbying will also, in most instances, be hoping to exert their influence. Were the bill to proceed, any proposal to exclude union and non-commercial lobbying from its ambit would have to be rejected. To

exclude unions from the ambit of the bill would require the exclusion of business organisations as well. Together with the Government, the CTU and BusinessNZ are recognised internationally as social partners. Excluding unions and not business organisations would demonstrate a degree of inconsistency bordering on favouritism.

6. Open access is important in a free society; limiting access, as the bill proposes, would effectively mean confining it to the select few. Those who engage in lobbying, lobby on a collective, not an individual basis. Limiting access would mean divergent views would not be heard.
7. Ultimately, lobbying notwithstanding, it is for governments to decide for themselves what legislation they will pass or repeal, what contracts they will award and so on. Members of the public can subsequently use the ballot box to indicate agreement or otherwise.
8. If the lobbyist registration process has bureaucratic nightmare potential so too does the process of suspending or removing persons from the Auditor-General's Register of Lobbyists. It might be thought that the Auditor-General's office has more important work to do than pursue recalcitrant lobbyists.
9. Nor is there any right of appeal from Auditor-General decision-making. Under clause 16(2), suspension or removal is at the Auditor-General's 'absolute discretion', hardly, in terms of s 5 of the New Zealand Bill of Rights Act, a reasonable limit that '... can be demonstrably justified in a free and democratic society'. Likewise, the Attorney-General's report on the bill considers that it would limit freedom of expression 'as affirmed by s 14 of the Bill of Rights Act'.
10. The requirement to register as a lobbyist would mean it was an offence to engage in lobbying activity in the absence of registration (with maximum fines of \$10,000 for an individual and \$20,000 for a company or other organisation). That would inevitably involve lawyers and possible appeals through the courts to determine whether or not a particular 'communication' could be classified as lobbying.
11. The court process (or processes) would impose a deal of cost on the tax payer as on the defendant but escalating costs would also feature in the setting up of the registration regime, affecting not only the taxpayer but persons and organisations required to engage in the lobbying registration process as well. Were the legislation to apply to all lobbyists (a necessity if the bill were to go through), many unpaid persons would face considerable expense in terms both of money and time.
12. On the above points, the conclusions of the UK Committee on Standards in Public Life's Fifth Report (January 2000 – not the first time lobbying registration had been rejected) are of some relevance.

Recommending against the regulation of lobbying (a recommendation accepted by the then government), the report noted:

*7.28 In the opinion of the Committee, the weight of evidence is against regulation by means of a compulsory register and code of conduct. Lobbyist regulation schemes can help make government more open and accountable, providing useful information about influences on decision-making. But we believe that the amount of information that could be made available through a register would not be proportionate to the extra burden of establishing and administering the system. There is also still force in the Committee's original objection, that such a system could give the erroneous impression that only 'registered' lobbyists offer an effective and proper route to MPs and Ministers.*

13. This year, the current UK government has produced a consultation paper on 'Introducing a Statutory Register of Lobbyists'. The report-back by the relevant parliamentary committee similarly identified problems with what the paper's proposals, making it very apparent that attempts to tie down the lobbying process, removing all possible loopholes, have small chance of success. This is particularly the case in a country such as New Zealand where the possibilities for informal lobbying are considerable.
14. Most countries do not try to regulate the activities of lobbyists – doubtless because advocacy regulation is expensive and difficult to enforce. It is understood that this bill is modelled on Canadian legislation that is largely directed to regulating lobbying carried out for an individual's or corporation's financial gain. US legislation is similarly focused and prosecutions in both jurisdictions have generally been taken in connection with lobbying carried out for that purpose.
15. By contrast, New Zealand lacks evidence of any widespread problem requiring the regulation of advocacy. Transparency International's 'Corruption perception' index lists this country as first in the world for least corrupt status. (Report released 1 December 2011. Suggestions for avoiding complacency did not encompass lobbying legislation. It is very much a question of not trying to fix something that isn't broken, thereby creating a last state very much worse than the first.

## **RECOMMENDATION**

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## **APPENDIX**

### **Background Information on BusinessNZ**

Encompassing four regional business organisations (Employers' & Manufacturers' Association, Employers' Chamber of Commerce Central, Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), its 71 member Major Companies Group comprising New Zealand's largest businesses, and its 70-member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, BusinessNZ is New Zealand's largest business advocacy body. BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, BusinessNZ contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.

BusinessNZ's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.