

Mark Unsworth

The Lobbying Disclosure Bill

a solution for a problem that doesn't exist?

Three years ago, on 13 June 2011 Green MP Sue Kedgley launched a campaign and released a members' bill to establish a publicly-accessible register of lobbyists. It was claimed to be 'all part of our campaign for more open, transparent, and honest politics' (Green Party, 2011). The Lobbying Disclosure Bill was eventually introduced into Parliament, but failed to win enough support to be passed. It is timely to investigate why an attempt to introduce rules on lobbying, which exist in many Western countries, met with little support here.

What, perhaps, is unique about New Zealand society and the public's interaction with the political world that has led to a

less than enthusiastic interest in the need for regulation of those who lobby? Was the Greens' bill a solution to a problem that didn't exist?

My title doesn't wish to diminish in any way valid concerns I share regarding the need for openness and transparency in political society. I suspect, however, that some of those calling for more openness and transparency actually only require it from sectors they mistrust, such as the business sector, and are not willing to apply the same transparency requirements to themselves.

One of my strongest beliefs about why restrictions on lobbying were not championed in this country is that the

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concept never had any mass appeal here. Apart from to the Green Party and some in academia, this was never a burning issue in New Zealand. Why is that?

My initial belief is that New Zealanders are generally fair and reasonable people, but also independent. They will support legislation and regulations that restrict freedoms in respect of seat-belts in cars, cycle helmets etc. when these seem to make sense to most people. At other times, especially when publicised and ridiculed as with rules on shower heads, the opposition to so-called 'nanny state' restrictions creates a backlash.

The Greens introduced their bill with a fierce attack not on all lobbyists but just on those representing the business sector. 'The ongoing growth of lobbyists' influence has subtly shifted the political landscape in favour of corporate interests', Sue Kedgley thundered (Green Party, 2011). Leaving aside the obvious fact that Kedgley was conveniently forgetting that it was environmental lobbying and consciousness-raising that had allowed her to become an MP, the key point is that the Green Party seems to have been in a tiny minority in holding this view. The public showed no sign of concern. Even the media coverage of the policy launch skipped the public policy issue, instead concentrating on the red herring matter of parliamentary passes, which some lobbyists, myself included, carry.

The Greens and academia still hold that New Zealand must have this legislation, but their strongest argument seems to be that New Zealand needs it because other countries have it. My view, and it's one that those who understand the Kiwi nature well may support, is that New Zealand should decide on what we need ourselves. Do we need laws imposed on us just because other countries have them? I suspect most would support the notion that our laws should reflect New Zealand society and how it operates, not other countries which may be similar to New Zealand on the surface, but in reality are miles apart.

How do our neighbours behave?

It is useful to look at our close allies who operate various forms of controls on lobbying.

Australia

Our closest friend is Australia: very similar to New Zealand in many ways; but, it must be said, history shows a much more lenient attitude towards accusations of corruption in Australia, especially relating to the police. Australian politics is also multi-layered, with their state systems offering wider options for political pressure. Pork-barrelling (spending on local projects primarily for political advantage) is also endemic in Australia, as this article in the Australian notes with a touch of humour:

Bert Kelly – a minister for public works in the Holt and Gorton government and a fierce advocate for sound economic policy – used to say that whenever an election

become more and more American in style, dividing between the Labor and Liberal camps. The top lobbyists not only report from the sidelines, as is the case in New Zealand; they are often senior party office holders who not only fundraise but help lead party factions and play a role in leadership ballots. To my knowledge, no New Zealand consultants operate in this manner. The small number of true lobbying firms operating in New Zealand requires political impartiality, or they wouldn't survive. Some Australian consultant lobbyists also accept success fees for bringing in government contracts, a move which critics believe can encourage corruption. Again, this practice is unknown in New Zealand.

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was imminent, he 'could feel a dam coming on'. Shots on the evening news of the two party leaders, in fleuro vests and hard hats, promising investment in motorways, rail lines, broadband or even stadium lights, has become the standard fare of election campaigns. (Uran, 2013)

While New Zealand politicians are not innocent on the charge of election bribes, our MMP system vastly reduces the need for regional-specific lobbying and/or corruption. We still have 'marginal electorates' in New Zealand, but they don't matter as much as it is the overall party vote which decides elections.

Another significant difference which has an impact on the perception of the relationship between lobbyists and politicians in Australia and New Zealand is the different manner in which consultant lobbyists operate. To begin with, Australian lobbying firms have

United Kingdom

New Zealand's lobbying environment is also chalk and cheese compared to that in the United Kingdom. In the House of Commons backbench MPs can serve as paid corporate lobbyists. Although this news would startle many New Zealanders, it is generally accepted in Britain and Winston Churchill (for Burmah Oil (now BP)) and David Cameron (Carlton Communications) are among a long list of successful politicians who were concurrently corporate lobbyists. The practice of MPs accepting cash to ask questions in the House of Commons has also made headlines in Britain, a practice that again I have never heard of in New Zealand.

United States

New Zealand lobbying or political behaviour is also not comparable in any shape or form to the situation in the United States. Lobbying companies,

often law firms based in Washington, have massive power because they are the fundraisers for the grossly expensive television-based election system. Analyst James Thurber estimates that the actual number of working lobbyists is close to 100,000 and that the industry earns \$US9 billion annually (Attkisson, 2012).

What is unique about New Zealand?

New Zealand is a comparatively corruption-free society. Transparency International judges New Zealand to be the least corrupt country; we have been at the top for eight straight years and never lower than fourth place since 1995. Its definition of corruption encompasses 'undue influence over public policies,

New Zealand's political system is also open by international standards. The public can attend all sittings of Parliament and nearly all of the business of select committees which review legislation and government agency performance and expenditure. The select committee process itself is open and transparent and easy for ordinary citizens to access. All bills, and submissions to select committees, are available online, as are copies of all oral and written parliamentary questions and petitions.

New Zealand also has a powerful tool in its Official Information Act (OIA), although improvements could be made. It requires government agencies and ministers to provide vast amounts of

an MP, knowing that a team of excitable journalists will make a huge fuss if they are found to have spent more than \$25 on a bottle of wine at a restaurant with an overseas guest. This lowest-common-denominator and sometimes prurient media coverage is an unpleasant and quite immature side effect of having a transparent democracy.

Another significant point of difference is that in New Zealand nearly all voting in Parliament is done along party lines. The rules allow for conscience votes to be held as required, and these do occur in debates on moral issues such as the drinking age, abortion and same-sex marriage. Increasingly, however, minor party leaders are limiting the opportunity for real conscience votes and declaring a party line for all to follow. This may reduce opportunities for individual MPs to make a principled stand, but, at the same time, the near monopoly of party voting reduces the impact of lobbying individual MPs and the risk of corruption.

Another vital, but hard to measure, difference in the New Zealand political system is that our MPs are generally accessible. We don't treat them like gods as happens in other countries, and, apart from the prime minister, they nearly always travel without a security presence. Our MPs can be seen out shopping in the weekends, opening bowling clubs, at A & P shows and school fairs, at the movies and in pubs and cafes across the country. Nearly all electorate and some list MPs hold weekly or monthly clinics for constituents. They are all resourced to have a staffed electorate office, and staff in Parliament to take calls and requests. A meeting with a local MP is not generally difficult to arrange.

In Wellington MPs can be seen on Lambton Quay or The Terrace nearly every day; MPs can be seen in the Koru Lounge at airports regularly. You don't have to pay to get access to MPs in New Zealand. A good cause and a polite call, email or letter will often do the trick.

Analysing the Lobbying Disclosure Bill

Pointing out why New Zealand is different from other countries which have lobbying restrictions does not by itself explain why

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institutions, laws and regulations by vested interests at the expense of the public interest'.

Some question such surveys as they record just 'perceptions' of a number of international agencies. However, in 2013 Transparency International New Zealand conducted a National Integrity System assessment. As reported by Liz Brown:

The overall conclusion is that New Zealand's National Integrity System remains fundamentally strong. By international standards there is very little corruption and New Zealand remains legitimately highly rated against a broad range of international indicators of transparency and quality of governance. (Brown, 2014)

New Zealand enjoys the scrutiny of a free and active press. Hints of corruption or even cronyism at any level are pursued vigorously by the media.

official data in a timely manner. The OIA is regularly used by opposition political parties and the media to shine light on the activities of ministers and government officials, and report inconsistencies between the recommendations of officials and actual decisions taken.

New Zealand has strict rules on the declarations of political parties and restrictions on media and other advertising and promotion during election campaigns. MPs must sign pecuniary interest registers annually and these must include political gifts and corporate hospitality. Many sensitive government departments also have tough rules on the acceptance of hospitality, gifts and travel.

The New Zealand regime is so open that anecdotal evidence exists that it actually discourages more professional people from participating in politics. The belief is that business people in particular are unlikely to enjoy a stint as

this particular legislative attempt failed to secure support. There are possibly many reasons, but for me the fault lay in the fact that the Lobbying Disclosure Bill was so thorough and comprehensive. As counterintuitive as this may sound, to be totally effective any regulatory controls on lobbying must be comprehensive, but the result is a nightmare of red tape and the inclusion of potentially thousands of people who do not identify as lobbyists. Sue Kedgley's not-so-secret desire when she launched the bill was really to control business lobbyists, especially those who opposed her environmental thinking. The legislation was drafted, however, in a manner to include every type of lobbyist, from the corporate representative through to iwi, freshwater campaigners, the church and the trade unions.

The reaction to the bill voiced in submissions was widespread and overwhelmingly negative. The usual suspects, big business and lobbying consultancies, spoke out, but were joined by every other sector in society and no punches were pulled. Quick snapshots from the submissions received by the government administration select committee reviewing the bill include:

Amnesty International: it would discourage debate.

Caritas: too broad.

National Council of Women: it would erode the rights of New Zealanders.

New Zealand Law Society: impractical.

Trade unions: reporting requirements are burdensome.

Iwi: restricted freedom of speech.

Forest & Bird: poorly drafted.

New Zealand Society of Authors: would undermine democracy.

The problem, as noted earlier, is that if you want to regulate lobbyists accurately and effectively, then you cannot just choose some lobbyists. You can't target a consultant and leave out a church, university or NGO, all of whom are very

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effective advocates for their followers or members.

Some, including the Labour Party through an SOP (parliamentary amendment) proposed by Charles Chauvel, suggested narrowing the definition to exclude groups such as trade unions and charities (Chauvel, 2012). This incredibly self-serving suggestion implied that trade unions and others who support Labour don't lobby, or, if they do, shouldn't face transparency requirements. It never had a chance in our Parliament, which to me again epitomises the inherent fairness that is expected in New Zealand society and not always in other countries.

Other submitters suggested only regulating third-party (consultant) lobbyists. To their credit, groups such as Forest & Bird dismissed this idea. 'Lobbying is lobbying, whether on behalf of a third party, or oneself', they noted (Forest & Bird, 2013). In the end, the final nail in the coffin of the bill was submissions not from lobbyists but from our legislative parliamentary specialists. The clerk of the House told the committee that the bill's application to parliamentary proceedings would 'be likely to put pressure on the privileges of the House, diminishing its powers and immunities'. The attorney-general concluded that the bill could 'limit freedom of expression as affirmed by section 14 of the Bill of Rights Act 1990'. He also noted that 'freedom of expression is an essential barrier to state tyranny, and the ability to freely express view and opinions; citizens should not

be silenced but the state' (Government Administration Committee, 2013).

Other options

The death of the bill at the select committee stage didn't halt general debate on transparency issues, and the new Green MP, Holly Walker, who inherited the bill after Sue Kedgley resigned from Parliament has continued her wide and comprehensive consultation on these issues. Walker proposed a range of possible revisions in an options paper, and it is worth considering these in a New Zealand context.

A. *Definition of lobbying activity narrowed: only pre-arranged oral communication*

This would reduce red tape but lobbying when you 'bump into' rather than schedule a meeting with someone is just as effective. It would completely miss socialising at a gentleman's club or trade union function.

B. *Lobbyist narrowed: only those who undertake lobbying as part of regular duties*

Again, this would cut down on red tape but would miss the businesses, charities, NGOs or law firms that lobbied on a one-off case yet may have been incredibly effective.

C. *Who is lobbied narrowed: public office holder narrowed to only ministers*

This ignores the fact that so many of the key decisions-makers are the officials in government agencies, advisers, private secretaries and even select committee chairs.

D. *Administration: moved to a new, independent body*

More sensible, but it could develop a life of its own.

E. *Onus on registering and disclosing: moved from individual to organisation they represent*

Again, sensible, but it isn't full disclosure.

Could some form of regulation be

Figure 1

European Union Breakdown		New Zealand – estimated guess	
Trade Federations	35%	Companies	26%
Commercial Consultants	15%	NGO's	18%
Companies	13%	Business Associations and Unions	20%
NGO's	13%	Iwi	5%
Business & Labour Association	10%	Consultants	18%
Regional representaion	8%	Local Government	7%
International Organisations	5%	Government funded advocacy	5%
Think tanks	1%		

useful? Personally I have no problems with a lobbyist register, although I am not sure what use it would have. Who

lobbies in New Zealand? It is hard to say exactly, as it isn't recorded. Having read an estimate of who lobbies the European

Union in Brussels, I conducted a quick survey among fellow lobbyists and current and former Beehive staff. The results are shown here in figure 1.

To finish on a lighter tone, I would like to note the wording of one line in the proposed Lobbyist Code of Conduct in Australia: 'Lobbyists shall not make misleading, exaggerated or extravagant claims.' While obviously approving of this sentiment, which I follow every day, I make the observation that if MPs in the debating chamber were obliged to sign up to an identical code, Parliament would probably only need to sit for three weeks each year.

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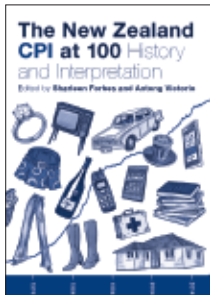
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The New Zealand CPI at 100: History and Interpretation



Edited by Sharleen Forbes and Antong Victorio

Very few New Zealanders have lives unaffected by the Consumers Price Index, or CPI. It is used by the New Zealand government to adjust student allowances, welfare benefits and superannuation; by the Reserve Bank to guide monetary policy; by the old Court of Arbitration, and also by employers and employees, to negotiate wages; and by the media to inform the public about the effects of price changes on their standard of living.

Some authors in this book document the New Zealand CPI as a history of conflicting machinations between unions, employers, public officials and lobby groups. Others view it as a mirror of domestic social norms and important international developments that eventually developed into a beacon with considerable public trust. Still others emphasise its technical evolution, from a crude selection of prices necessary for a just wage, to a modern indicator of consumer satisfaction and economic management.

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The New Electoral Politics in New Zealand: The significance of the 2011 Election



Edited by Jack Vowles

Around the world there was unusual interest in New Zealand's electoral politics during the 1990's, because of the country's adoption of the Mixed Member Proportional (MMP) electoral system. Since then international interest has lapsed. Yet at the 2011 election and concurrent referendum, New Zealanders voted to retain the MMP system. Among other inquiries, this book asks the question: why?

Looking back to the 2011 election and before, this book lays out the current state of the play in New Zealand electoral politics. Despite its reservations about MMP, the National Party has done very well under that system, particularly since 2005, with a vote share and polling that brought it well within reach of a single party majority in 2014. For these reasons National appears unwilling to change the MMP system in ways recommended by an independent review conducted by the Electoral Commission. This book explores these questions, as well as others, including voter turnout decline, attitudes to welfare reform, women's representation, changes in Māori politics, and the growing importance of immigration on New Zealand politics and society.

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