

Lobbying Disclosure Bill

**Submission of the
New Zealand Police Association**

**Submitted to the
Government Administration Committee**

5 October 2012

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About the New Zealand Police Association

The New Zealand Police Association (the Association) is a voluntary service organisation representing nearly 8,700 sworn police members across all ranks. The Association also represents more than 2,500 non-sworn members, who carry out invaluable support roles across the full spectrum of policing. Members are generally very active in engaging in debate and discussion within the Association on matters relevant to policing. The high engagement level of the membership is critical to the Association's ability to speak and act credibly on behalf of members.

Overview

1. The Police Association supports the broad intent of this bill, which is to ensure there is some transparency about who or what organisations are influencing public policy and/or legislation through lobbying activity directed at elected or appointed officials. There are, however, considerable practical difficulties with the bill as drafted, which would appear to make breaches of its requirements very difficult to avoid. The consequences of these broad definitions include that individuals and groups, who have a legitimate right to engage with their representatives as part of a healthy democracy, will be required to carry a burden of compliance costs and exposure to risks of non-compliance which are, in many cases, difficult to justify on public interest grounds.

Scope of register

2. The current drafting appears somewhat ambiguous as to who must be registered on the proposed register of lobbyists. It would appear to include any and every individual who engages in the sort of activity described in clause 7(2) in the course of their paid work (whether or not such activity is their main job). That would appear to include company CEOs, union secretaries, not-for-profit sector administrators or almost anyone else who wishes to communicate with a minister, member of Parliament, or official ('public office holder' as defined). Given many of these individuals may be engaged in lobbying, as defined, very rarely, there are some practical difficulties with requiring them to be registered before (for example) seeking to arrange a meeting with their local MP.
3. If the intent of the bill is to limit its scope to cover 'third party' consultant lobbyists, who act professionally on behalf of clients on a fee-for-service basis, then considerable redrafting is required.
4. From a Police Association perspective, we would have no difficulty in principle with being defined as 'lobbyists' if that is what is intended; though we would query the extent of any public good benefit that would accrue in return for the compliance costs associated with our being required to return details of every communication between paid Association representatives and public office holders.
5. The greatest public interest is in ensuring transparency where an individual, group, or organisation influences public policy or legislation in order to gain personal or private

advantage (usually commercial advantage). A clear example might include where a business lobbies in relation to an RMA application which has been called in by the Minister for the Environment. Such activity might be directed at those of the relevant Minister's colleagues who are believed to be influential voices, rather than direct lobbying, in order to build a vocal base of support for the business proposal (for example on local economic impact grounds). Such activity may be legitimate; however, as there is necessarily a balance to be struck in such public policy decision-making between the private interests and various public interests (some of which may coincide with, and some which may oppose those private interests), then the lobbying activity ought to be disclosed. At the least, transparency would diminish the possible perception of improper influence attained through 'secret meetings and back-room deals'.

6. A more common scenario, where the private benefit is less direct, might be where a business or coalition of businesses lobbies for a change to zoning, environmental or other regulatory controls to lower barriers or costs associated with a commercial activity they are or wish to engage in. Again, there may be strong arguments that the change sought is in the broad public interest (for example on economic development grounds); however, because those lobbying for the change stand to be the primary beneficiaries from it, it should be disclosed.
7. In these cases, the activity should be disclosed irrespective of whether the business or group of businesses concerned advances their interest themselves on their own behalf, or through an umbrella industry group, or through employing a third party lobbyist to act on their behalf. The public interest is strong in having greater assurance, through greater transparency, that public good interests in policy and legislative matters are not unduly compromised in favour of private (usually commercial) interests as a result of lobbying activity.
8. The public interest argument is less compelling where the objective of the lobbying activity is not to gain clear private or commercial benefit, or where any arguable private benefit may be weak or incidental – for example, where a desired policy change may impact on a large segment of population or wider industry, to which the lobbyists may belong. Examples might include unions or business groups lobbying for changes to labour relations laws, or groups arguing for taxation changes. The lobbyists clearly have a vested interest, but the lobbying activity is arguably nothing more than the articulation of a public policy viewpoint (as opposed to a private interest) that one would expect such a vested interest to hold; and indeed as a contribution to the sort of debate which ought to be encouraged in any healthy democracy. Those involved in such activity would be unlikely to fear publicity since their views are likely to be well known (and they may well welcome public and media attention to them), but it is difficult to see what is to be gained by imposing the compliance burden of requiring such activity to be reported.
9. Similarly, it is difficult to mount a compelling argument for the lobbying activities of altruistic or humanitarian organisations (such as animal rights, environmental or charitable groups) to be required to be reported (with attendant compliance costs and threat of action for non-compliance), even though they are highly unlikely to publicly resile from such efforts.
10. There is, of course, no bright line between private interest lobbying and participation in genuine debate about public policy. The situation may be less clear where a professional group (such as medical professionals' association, or indeed the Police Association) lobbies for public policy or government expenditure settings which may be seen to serve its members' interests (such as by allowing headroom for wage rises, or workforce expansion). A similar 'grey area' might arise where an industry grouping seeks public policy or regulatory change in an industry where there are relatively few

participants (such as telecommunications or power generation) but a very high public reliance on the industry, and so a potentially high public impact from the change sought. To further complicate the issue, an individual or organisation may on some occasions be lobbying for altruistic interests, and on some other occasions with self-interest. How and where the line should be drawn is difficult to determine. Supplementary Order Paper No. 76 appears to be an attempt to draw this distinction, though the solution it proposes (to exclude certain types of organisations from the definition) does not solve all the issues.

Scope of lobbying activity

11. The scope of lobbying activity, as defined by clause 7(2), is also somewhat ambiguous. The ambiguity mostly hinges around the phrase “undertakes to”. It is not clear whether this is meant to restrict the definition that follows to activity which is planned and agreed by the interest parties concerned in advance; or whether the word is simply meant to extend the definition to capture activity which was intended to be carried out, whether or not, in the end, it actually took place.
12. If the former is intended, it would appear to exclude lobbying engaged in by an individual on his or her own behalf, and also spontaneous, opportunistic, or ‘unapproved’ lobbying (since, in both cases, no prior undertaking is made to anyone else).
13. If the latter interpretation is intended, it would appear to capture any and all activity where there is communication between a ‘lobbyist’ (as very broadly defined) and a public office holder. New Zealand being as it is, lobbyists and public office holders come into contact regularly, in settings ranging from official functions, to chance meetings in airport lounges or on aircraft, to social occasions. Such meetings are not usually engineered to provide lobbying opportunities; however, casual discussion may easily stray onto topics which meet the definition of lobbying activity. This may be the case regardless of whether the individual is ‘lobbying’ over a matter which they have any vested interest; and irrespective of whether they consider themselves a ‘lobbyist’ and have registered as such. That is, the bill as defined would appear to capture every occasion where a business person (or other paid employee of any organisation) discusses any legislative proposal with an MP and expresses a view as to its merits, other than where they do so unambiguously as a private individual citizen, outside the bounds of their paid job.
14. Even where the individual concerned has registered as a lobbyist, recording and reporting details of every such exchange would be a considerable challenge.
15. There is a further difficulty in relation to communication with opposition politicians. If all such contact must be reported, including (for example) the passing on of information intended to strengthen the opposition’s arguments for or against a particular legislative proposal, individuals and organisations defined as ‘lobbyists’ may become reluctant to engage with opposition politicians. Such an outcome would be detrimental to the role of the opposition in our parliamentary system, and thus to the interests of democracy.

Alternative approach

16. It is, in our view, inherent and desirable in a healthy democracy that individuals and organisations should wish to engage with their elected representatives, and seek to promote policy and legislative solutions to the issues that cause them personal or professional concern. The ‘ill’ that this bill seeks to address is not such engagement, but rather the potential, or the perception, that such activity may in some cases lead to public interests being unduly compromised in favour of private or narrow interests due to improper and undisclosed influence being exerted.

17. It is arguable that it is the duty of the decision-makers in a democracy, and not those who seek legitimately to influence them, to safeguard against allowing themselves to be unduly influenced; and to provide public assurance that they have not been so influenced. It is also arguable that the compliance burden and costs of providing such assurance ought to fall on the democratic institutions of the State, and not on those citizens who wish to engage with them. As such, a more straightforward solution might be simply to require ministerial offices (who, as the executive, are the principle decision makers in matters of public policy and in bringing forward legislative proposals) to keep a register of and disclose broad details of all lobbying meetings. We would note that any documentation associated with lobbying activity, including correspondence and meeting notes, is already subject to the provisions of the Official Information Act and as such should be easy for any requester to identify with due particularity following such disclosure being made.
18. Some work would still need to be done to identify what constitutes 'lobbying'. A simple definition might revolve around the nature of the interest being advocated for (rather than the type of organisation doing the lobbying). For example, lobbying activity might be required to be reported if it is, or appears to the public office holder to be, intended to promote a position from which the lobbyist (or their client, if acting on behalf of another) would be the sole, main, or significant material beneficiary. Such a definition would tend to exclude altruistic activity, and also activity that promoted a broad public policy position.

Conclusion

19. The Police Association supports the underlying intent of this bill, and has no fundamental concern with being categorised as a 'lobbyist' if that is ultimately Parliament's decision. However, there are considerable practical difficulties with the bill as drafted, particularly around its broad and ambiguous scope. Consequently the bill is likely to impose a considerable burden of compliance on individuals and organisations who are simply engaging in their democracy in ways in which there is very little public interest, or risk of generating actual undue influence or even the perception of it. As such, it is very difficult to justify on public interest grounds asking such individuals and organisations to assume both the compliance costs and risks associated with non-compliance.
20. Engagement by individuals and organisations with public office holders on matters of public policy and legislation is an important feature of a healthy democracy; whether that engagement is motivated by altruism, self-interest, or a mix of the two. It is arguably the duty of the public office holders, and not those communicating with them, to safeguard against undue influence; and it is arguably appropriate that the compliance costs of providing public assurance that they have not been so influenced ought to be borne by the democratic institutions of the State. We believe that an alternative approach, based on these principles, ought to be considered instead of the compliance regime proposed by this Bill.

Greg O'Connor
PRESIDENT