

Holly Walker

The Lobbying Disclosure Bill and the Case for Greater Transparency in New Zealand

The Green Party has championed honest politics in New Zealand for many years. The party has always been committed to open and transparent government, and has taken steps in the past to advance this, including by proactively disclosing our MPs' expenses and by fighting for electoral finance laws to be cleaned up. Greater transparency about lobbying is another step towards this goal of honest politics and more open government.

The public deserves an open and accountable political system. Accessing and influencing MPs should be a level playing field; it should be equally easy for all citizens to engage as active participants in our democracy. Greater transparency

about political lobbying would give New Zealanders peace of mind that ministers and lobbyists aren't trading favours behind closed doors. It would also shed light on this sort of activity when it does occur, and hopefully reduce the political

point scoring that inevitably happens when there are questions left unanswered about who is influencing whom.

The Lobbying Disclosure Bill

Former Green MP Sue Kedgley launched the Lobbying Disclosure Bill in 2011 out of a concern about the growing influence of lobbying in New Zealand. After 12 years in Parliament she believed lobbying was becoming increasingly entrenched in our political system, and she was concerned that it was often happening behind closed doors. While New Zealand hasn't experienced the high-profile scandals involving lobbying that are common in places like the United States and the UK, the reality remains that some people have a better chance of being heard than others – and a lot of the time we don't know who these people are or the extent of their access.

The Lobbying Disclosure Bill was a chance to create best practice in New Zealand while we still can. The bill was closely modelled on the successful Canadian regime, and was developed following an OECD report recommending

Until recently, **Holly Walker** was a member of Parliament for the Green Party. Prior to becoming an MP in 2011 she served as a political and media adviser to Green MPs and as a policy and negotiations analyst in the Office of Treaty Settlements. She was a Rhodes scholar at the University of Oxford during 2007–09.

that member countries take action to establish lobbying disclosure regimes. As the Green Party's new open government spokesperson, I inherited the bill from Sue when I entered Parliament in 2011. It was pulled from the ballot in April 2012, and had its first reading in July. It passed the first reading and was sent to the government administration select committee for consideration.

Purpose of the bill

The aim of the bill was to bring a greater measure of transparency and public disclosure to lobbying activity in New Zealand and to enhance trust in the integrity of political decision-making. In seeking to achieve that, the bill would do two things:

1. establish a Register of Lobbyists: anyone paid to undertake lobbying activity would be required to register and file quarterly returns with the auditor-general;
2. empower the auditor-general to develop a code of ethics for lobbyists in consultation with key stakeholders and the public; once finalised, anyone registered as a lobbyist would be required to comply with the code of ethics.

The bill defined a 'lobbyist' as anyone who is paid to influence public decision-making. This meant it would have applied to anyone who is paid to communicate with a public office holder (an MP, minister, or anyone employed in their office) in an attempt to influence that public office holder.

'Lobbying' was defined as communication in an attempt to influence public decision-making in relation to legislation, regulation, government policy, or the awarding of contributions, contracts, grants or funding by or on behalf of the government. It did not include any submission to the House, any communication which is restricted to a request for information, or public communication (e.g. tweets, blog posts, Facebook, letters to the editor, etc.).

Guiding principles

From the start there were four key principles which guided my work on the bill, and which are important in framing

the conversation about this bill. These are also drawn from the Canadian regime.

Lobbying is a legitimate activity

In seeking to introduce a disclosure regime and a code of ethics, the intention was not to denigrate lobbying as illegitimate or to prevent it from happening. MPs need to hear from those with expert knowledge on certain issues to help inform decision-making. Lobbying is a valid part of this information-sharing process. Although the bill required certain communications to be registered and declared, it did not seek to prevent these communications from taking place.

Open and accessible government and Parliament are vital

We are lucky in New Zealand to have a relatively open and accessible Parliament, and approachable MPs. It should be as easy as possible for people to actively engage as citizens in our democracy. In no way was it the intention of this bill to restrict public access to MPs or to have a chilling effect on interactions between the public and their representatives. In fact, a properly functioning lobbying disclosure regime should enhance public engagement and participation in the democratic process.

The public has a right to know who is lobbying MPs on which issues

Nevertheless, part of an open and accessible political system is transparency about who has that access. The public has a right to know who is influencing MPs on which issues. Transparency about lobbying activity would help to level the playing field in terms of influence on decision-making.

A lobbying disclosure regime needs to be practical, workable and fair

Any requirements need to work in the context of the New Zealand political system and be workable in practice. It is largely on this point that the bill got caught up during the select committee's consideration.

Consultation and select committee process

After the bill was first pulled, I engaged widely with stakeholders in an effort to understand how this sort of regime would

fit within their activities and the impact it would have on their work. This included meetings with consultant lobbyists, in-house lobbyists from businesses and NGOs, and representatives from trade unions, charities and other political parties, all advocating for a wide range of issues.

The select committee received 104 submissions, from an equally diverse range of submitters. The overall message was general support for the principles of the bill: to bring transparency to political lobbying in New Zealand. But what also became clear through the consultation process, and again through the submissions to the select committee, was that the bill needed amendment to ensure that it was appropriate to New Zealand's political context. There was a tension that needed to be addressed between a disclosure regime that upheld the principles of openness and transparency and one that was at the same time practical and workable.

Main areas of concern

There were at least four main areas of concern.

Definitions of lobbying activity and who is captured as a lobbyist

The definitions in the bill as it was introduced were deliberately wide because as soon as restrictions are introduced on what lobbying activity is, and therefore who is a lobbyist, you risk not capturing all the activity that should be captured. It also opens up avenues for getting around the disclosure regime. However, with such wide definitions there was also concern that you could unintentionally include many whom it was not intended the bill should capture.

Compliance: the onus of registering and filing returns

Concern was also raised about the compliance requirements of registering and filing the quarterly returns. Smaller organisations, in particular, were concerned about the potential administrative burden.

The size of penalties for non-compliance

The bill created two offences: one for

those who hinder an investigation or mislead the auditor-general, and another for those engaging in lobbying activity when not registered as a lobbyist. Both of these offences came with a maximum fine of \$10,000 for individuals and \$20,000 for companies or organisations. There was concern from many that these penalties were too high, particularly for smaller organisations, individuals, and those representing NGOs, not-for-profit organisations or charities.

The role of the auditor-general

In the bill as introduced the auditor-general was tasked with administering the lobbying disclosure regime and developing the lobbyists' code of conduct. Questions were raised about whether the Office of the Auditor-General was the most appropriate office to undertake this role, particularly because the auditor-general currently has no role in relation to private-sector entities and focuses on the expenditure of public money by the executive.

Revised proposal – options paper

After hearing from submitters, I drew up an alternative proposal that I felt addressed the concerns that were raised. I was able to present a series of recommendations that I hoped would form a lobbying disclosure regime that was more appropriate for our political context. These recommendations, briefly summarised, were:

- narrowing the definition of lobbying activity to only cover pre-arranged oral communication, where the primary purpose of that communication is an attempt to influence a public office holder in respect of legislation, regulation, government policy, or the awarding of grants, funding, contributions or contracts by or on behalf of government;
- narrowing the definition of a lobbyist to someone who undertakes lobbying activity as a part of their regular duties, whether or not they receive payment;
- narrowing the definition of a public officeholder to only include ministers, meaning that lobbying activity is only pre-arranged oral

communication with a minister in an attempt to influence legislation, policy, etc.;

- that the lobbying regime would be administered by a new, independent body, as is the case in Canada;
- shifting the onus of registering and disclosing lobbying activity from the individual lobbyist to the organisation they represent.

Unfortunately the committee decided not to accept these suggested changes, or pursue a register of lobbyists. While it was disappointing that the committee decided that the bill should not pass, however, it was encouraging that committee members were open to pursuing other mechanisms to help boost transparency in this area.

Recommendations from the select committee

In August 2013 the government administration select committee reported back on the Lobbying Disclosure Bill. In the final report it recommended a number of non-legislative options to introduce greater transparency around political lobbying and decision-making. These were:

- that the House:
 - develop guidelines for MPs about handling communications relating to parliamentary business;
 - review the relevant Standing Orders to ensure consistency;
- that the government:
 - require the regulatory impact statements and explanatory notes of parliamentary bills to include details of the non-departmental organisations consulted during the development of related policy and legislation;
 - encourage the proactive release of policy papers to make the policy-making process more transparent.

These recommendations were adopted unanimously by the select committee with cross-party support, so I am hopeful that they will eventually be implemented by Parliament and the government.

Ministerial disclosure regime

In recent months there have been several examples of why we need greater transparency in relation to lobbying,

from Judith Collins' trip to China and the infamous dinner with Oravida, to Maurice Williamson's resignation and the recent revelations about the National Party 'Cabinet Club'. In response to these revelations, and as a follow-up to the Lobbying Disclosure Bill, the Green Party has proposed that New Zealand adopt a ministerial disclosure regime, based on the system in the UK, which requires ministers to publicly release records of their meetings with external organisations, overseas travel, gifts given and received, and hospitality received. The records would be released on a quarterly basis and published online. The regime could be implemented by amending the Cabinet Manual.

I believe this could be a way to meet the strong public appetite for greater transparency and openness about who has access to our politicians in a simpler way than the more extensive lobbying disclosure regime. A ministerial disclosure regime would mean that the public would be able to see, on a regular basis, with whom ministers are meeting, from whom they're receiving hospitality and gifts, and details of their overseas travel. Some of this information is already made public through the Register of Pecuniary Interests, or can be sought via the Official Information Act. However, a ministerial disclosure regime would provide regular, proactive disclosure of this information, bringing a greater measure of transparency to decision-making and improving ministerial accountability.

This proposal has not found favour with the government, but I am hopeful that by keeping the conversation alive we will eventually take steps to introduce greater transparency about political lobbying in New Zealand. I hope my bill has advanced this conversation and increased the prospects for reform.

This article is based on the author's contribution to a roundtable on lobbying hosted by the Institute for Governance and Policy Studies in Wellington on 16 May 2014.