SAUNDERS UNSWORTH

Government Relations Consultants

Submission to the Government Administration Select Committee on the Lobbying Disclosure Bill

October 4, 2012

Introduction

Saunders Unsworth specializes in the management of public policy issues on behalf of its clients. This submission is made on behalf of the company itself, a group of five consultants with experience in this area over the past 40 years, both in New Zealand and offshore.

This includes working as: lobbyists for industry organisations and corporates, MP and Cabinet Minister, Ministerial Advisor, government official, CEO of an industry organisation and a not for profit organisation, journalist including the press gallery, and dealing with public policy issues offshore as a diplomat in Asia and North American Director of the NZ Meat Board.

Public policy typically goes through a process involving officials, MPs and Ministers and interest groups, whether they be business, trade union, socially or environmentally oriented. It is the productive interaction between these three groups that produces changes to public policy. Having the full involvement of all three groups ensures we get much better public policy than would otherwise be the case. The alternative is to leave everything to officials and MPs, with everyone else exercising their influence through a vote once every three years.

Transparency International has rated New Zealand No 1 on the Corruption Index. There is a good reason for this rating which reflects the inherent professionalism of the public service, the integrity of MPs and the fact that the country is small enough for people to notice corruption, but not so small that it can all be covered up within a family or small clique.

Problem definition

All Bills should deal with a real problem, in a cost effective way and not create adverse unintended consequences. This Bill fails that test. It is a solution looking for a problem that does not exist, but there may be some perception issues, which should be addressed.

The explanatory note to the Bill reveals many misconceptions about how the lobbying business works in New Zealand, and proposes solutions, that would seriously damage the democratic process and create significant costs, for no real gain.

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Proposed amendments exempting some parties would make it worse.

The problem in the explanatory note is stated to be:

1. No public scrutiny of people paid to lobby Parliamentarians, their staff or public servants.

2. Lobbyists are not regulated.

3. There are perceptions that some lobbyists may exercise undue influence, and that the growth in lobbying has subtlety shifted the political landscape in favour of corporate interests.

Only the second point is broadly correct in that there is no specific regulation of lobbyists.

No scrutiny: Clearly the public/media do not sit in on meetings between lobbyists and MPs, advisors and Ministers. However the Official Information Act (OIA) means any written material can be obtained from Ministers and departmental officials, and all Bills, submissions and votes are a matter of public record.

The OIA is a very powerful piece of legislation, which is used extensively by the media and to some extent by lobbyists to see what officialdom is saying and also what opposition lobbyists are seeking. It appears to be a stronger Act than the Australian equivalent.

The media is also free to interview lobbyists about the work they do in general and on particular issues. For whatever reason, this company gets very few calls from the media about policy issues being handled. Saunders Unsworth lists clients on its website and profiles its consulting team, as well as explaining how the company operates.

The New Zealand public policy making processes are very transparent.

There are practical limits to how far it is desirable that conversations between lobbyists, advisors and MPs/Ministers are on the public record. In the interests of free and frank exchange it is necessary people can discuss issues in private.

Otherwise why not have:

- All Cabinet and caucus meetings open to the media

- Post election meetings between parties open to the media, so everyone can see how the tradeoffs are negotiated

- Meetings between coalition parties open to the media also; and,

- All sessions of Select Committees open to the public.

In each of the above examples, the end result is usually clear to all. The same goes for the work of lobbyists. If the media is interested in the issue as it progresses, it can make inquiries of lobbyists, officials, Ministers and MPs, and if need be use the OIA.

Undue influence: Today political influence is highly dispersed and business has to compete with labour, environmental and social groups for the attention of policy makers.

The Bill's clauses

Definition of lobbyist

The broad definition of a lobbyist in the Bill is generally acceptable. If this area is to be subject to specific regulation, it should cover everyone engaged in it. Otherwise we would have the bizarre situation that some parties to an argument were covered, and under the Bill required to disclose what they were doing, while the other side was not.

For example the suggestion that trade unions should be exempted from coverage would leave them able to observe the record of business organisations while they could not see what the unions were up to. This would be absurd. A similar situation would arise with business interests vis~a~vis environmental organisations.

It is noted however that the wide definition proposed would encompass many people. That would not a problem if the Bill were limited to a Code of Conduct, but the registration and quarterly reporting requirements would make it a bureaucratic nightmare for many people and enforcement would be very difficult.

Requirement to register

The requirement for anyone engaged in lobbying to register as lobbyists is completely unnecessary. It would generate high costs to the taxpayer, unless that process was to be self funded by the agency, which would be anti-democratic in effect. The costs of participating in the policy making process should not be made more costly.

Requirement to file quarterly returns

The detail specified in the Bill is comprehensive and if taken literally, would breach normal expectations as regards privacy and commercial sensitivity. Having quarterly returns from many lobbyists would be truly absurd, as some would have nothing to report. At a time when the Government is trying to reduce costs to the economy, and generate more wealth so we can afford better education, health and other public services, this would be a real step in the wrong direction.

Code of ethics or conduct

We are unconvinced there are any ethical issues that require regulation, but if a Code provides greater comfort to the community, this aspect is not seen as a problem.

The options

We see the realistic options as:

1. To reject the Bill because it is a costly solution to a problem that does not exist;

2. Pass the Bill, with the definition of a lobbyist along the lines of that proposed, and a Code of Conduct, but with no requirement to register or file quarterly returns;

3. Defer consideration of the Bill until the NZ Law Commission has considered the issues including whether the OIA, Electoral Act and other relevant legislation leave gaps that need to be filled. The Commission has recently completed a comprehensive review of the OIA and understands competing considerations such as transparency, privacy and commercial sensitivity.

4. Political parties concerned about this area, could set up a disclosure regime on their own websites, so that the public could check on which lobbyists were making contact and what they are advocating.

We wish to appear before the Committee.

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