# A Balance of Voices:
# Options for the regulation of lobbying in New Zealand
# Draft Report
# Version 2.0

## Executive Summary

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Feedback on any part of this draft report is appreciated. The Executive Summary and Key Questions are for those who are time-pressed or wish to focus their responses. Please submit your feedback to consultation@healthcoalition.org.nz. Your insights and perspectives are essential as Health Coalition Aotearoa cultivates the Integrity Protection in Public Policy-making project. Thank you for your participation in this important process.

**Report notes:**

This draft report was prepared for Health Coalition Aotearoa (HCA). It forms part of HCA's Integrity Protection in Public Policy-making project, and assists civil society's contribution to the Ministry of Justice's review of lobbying laws. The report is based on research into past New Zealand attempts to regulate lobbying, reviews of international approaches, local research into lobbying activity, and approximately 20 interviews with local and international figures.

- Max Rashbrooke

This draft document outlines preliminary considerations for the review of lobbying legislation in New Zealand. We acknowledge the initial lack of Māori engagement and participation in this process. Moving forward, our consultation plans prioritise meaningful kōrero with Māori stakeholders to ensure their important perspectives are understood and reflected in the final report. HCA is committed to conducting further work to comprehensively understand the potential impact of any proposed legislation on hapū, Iwi, and Māori communities. This note underscores Health Coalition Aotearoa's commitment to inclusivity, equity, and responsiveness to diverse perspectives, honouring our commitment as a Te Tiriti-led organisation.

- Health Coalition Aotearoa

# Executive summary

*Lobbying can be healthy – or harmful*

Democracies must always protect the integrity of their public policy-making: they must ensure, in other words, that political decisions serve a broad public interest rather than narrow private ones. This requires a wide range of voices to be heard with some degree of equality.

Lobbying, defined simply as attempts by individuals and organisations to influence public decision-making, can be a healthy part of the democratic process, if it provides decision-makers with valuable information. It can, however, be harmful if it is carried out unethically, abuses confidential information, or leads to large imbalances in access to decision-makers.

Previous attempts to regulate lobbying in New Zealand have failed, owing in part to the difficulties of defining who is a lobbyist, who gets lobbied, and what counts as lobbying activity. More and more developed countries, however, are regulating lobbying, and the mechanisms they employ are increasingly standardised. This leaves New Zealand as something of an outlier. Moreover, recent incidents and media reports suggest there is sufficient lobbying activity in New Zealand, and sufficient concerns about it, to justify some degree of regulation.

*There is no perfect way to define a lobbyist*

To be effective, regimes must focus on regulating the most high-intensity, well-resourced or 'professionalised' lobbying. The broad international consensus is that regulation should address the lobbying that occurs whenever:

- Anyone from a reasonably well-resourced organisation
- has formal, prearranged contact
- with an MP, a member of their staff, or a senior public servant
- regarding a government law, policy or award of funds.

Capturing only 'professionalised' lobbyists, however, is not easy. Limiting the definition to third-party or consultant lobbyists (the **Australian** system), omits the large volume of lobbying done by in-house 'government relations' staff and others. But trying to isolate, in law, particular staff members within organisations (the **Canadian** system) is difficult. Under the simplest and most comprehensive regime (the **Irish** system), a lobbyist is deemed to be anyone who contacts senior public decision-makers while representing the interests of a moderately well-resourced organisation. In practical terms, this is defined as anyone representing:

- a company with at least 10 staff;
- a "representative" body, e.g. a business peak body, with at least one paid staff member;
- an "advocacy" body, e.g. an NGO, with at least one paid staff member; or
- any third party representing the interests of one of the above organisations.

This definition can be augmented by also explicitly targeting self-employed people (the **French** system), although pragmatically this could be difficult in New Zealand.

The Irish system brings into view the lobbying of a wide range of (at least moderately) well-resourced organisations, permitting – among other things – the detection of imbalances in access between them. Communications by "ordinary" members of the public, meanwhile, are kept out of scope. The regime appears to have operated well since its 2015 inception.

But while the compliance costs of the Irish system do not appear burdensome, it is nonetheless a large mechanism to bring into action. Small NGOs might object to being swept up in its net, or it might seem disproportionate to the scale of the issue in New Zealand. So the number of bodies brought within scope could be limited by, for instance, capturing only NGOs with five or more staff, or only those organisations that have more than a certain number of contacts with government in a 12-month period. This could, however, create undesirable loopholes.

*Informal lobbying is a vexed question*

This report's proposed definition of 'lobbying activity' is that it consists of premeditated written, electronic and oral communication with senior public decision-makers (also known as 'designated public officials' or DPOs). This would capture texts, emails, phone calls and meetings, and prearranged corporate hospitality. It would not capture unplanned, chance or spontaneous encounters with public decision-makers. Arguably such contacts should fall within scope. But there are practical and philosophical problems in trying to capture them.

*The objects of lobbying need to include public servants*

The DPOs being lobbied are, for the purposes of this report, members of Parliament (including ministers), certain staff working in their offices, and public servants working in tier 1-3 roles (which typically denotes chief executives, deputy chief executives and general managers). These are, broadly speaking, the individuals with the most significant influence over public policy, and whose engagements with lobbyists are therefore of particular interest. The inclusion of senior public servants is important because, anecdotally, they are frequently the targets of lobbying.

*Certain regulatory mechanisms are now standard*

Internationally, five regulatory mechanisms are generally regarded as essential:

- an overarching law to regulate lobbying;
- a publicly accessible register of lobbying activity;
- stand-down periods during which former public officials cannot become lobbyists;
- codes of conduct for lobbyists (and sometimes for those being lobbied); and
- a regulatory body empowered to oversee and enforce the above mechanisms.

Three of these mechanisms target the three potential harms of lobbying described at the outset. Codes of conduct are designed to help prevent unethical lobbying; stand-down periods are aimed at preventing confidential state information being misused; and lobbying registers should not only allow the public to see if imbalances in access occur but also spur decision-makers to redress those imbalances. International evidence suggests that these measures can increase transparency about lobbying and help curb its less desirable elements. In doing so, such regulation can help protect the integrity of public decision-making and increase public

trust in the outcomes of democratic processes. While the new government's attitude to such measures is not fully clear, National has supported the three key ones mentioned above.

In New Zealand, this report proposes that the above mechanisms be enacted as follows:

- a Regulation of Lobbying Act 2024;
- an online and publicly accessible register in which lobbyists have to make quarterly returns detailing their contacts with DPOs;
- a stand-down period of three years in which former DPOs cannot lobby government on issues where they had official dealings;
- a mandatory code of conduct for lobbyists, and lobbying-related provisions added to existing codes of conduct for DPOs; and
- the creation of an independent Crown entity, either a narrowly focused Lobbying Commission or a more wide-ranging Integrity Commission, with the power to levy fines, prosecute law-breakers and generally enforce the above provisions.

*Transparency alone is not enough*

Transparency is clearly needed as to who is lobbying whom; accordingly, it is a key element of the regulations proposed above. But it may only *reveal* large imbalances in access to decision-makers rather than significantly *redress* that problem. Given the importance of the right to free speech, it is not easy or uncontroversial to go 'beyond transparency'. But stand-down periods and (enforceable) codes of conduct already do so, to some small extent. Moreover, it is worth considering whether policy-makers should face a duty to show they have heard from a balanced range of voices, or to report specifically on lobbying during each policy-making process. Different types of lobbying could be distinguished in reporting, although this would face challenges. Consideration could also be given to more extreme measures, such as the World Health Organisation policy of banning the tobacco industry from lobbying during regulatory reviews, although the wider justification of such measures in New Zealand is unclear.

*Treaty obligations need separate consideration*

In regulating lobbying, careful consideration must be given to obligations under Te Tiriti o Waitangi/The Treaty of Waitangi, and the need to ensure that regulations do not unreasonably limit opportunities available to Māori working in and around government. It may be necessary, for instance, to differentiate between Māori groups acting as Treaty partners and as lobbyists. Separate research on these issues, as commissioned by HCA, may alter or refine the conclusions in this draft report.

*A positive vision for participation is needed*

Finally, the regulation of lobbying must – as above – be seen in the wider context of the need to protect the integrity of public decision-making. This integrity is best preserved if, in addition to mechanisms to regulate those with high degrees of access, there are processes which enhance the access of those *not* currently well-engaged in democratic decision-making. We need, in short, to open up democratic processes to deeper participation by citizens. That requires an overarching shift in the openness of government processes, and the creation of new forums – such as citizens' assemblies and participatory budgeting – to deepen citizen engagement.