

# **Lobbying Disclosure Bill**

Member's Bill

## **Explanatory note**

### **General policy statement**

This Bill seeks to bring a measure of transparency and public disclosure around the lobbying activity directed at members of Parliament and their staff, and in so doing to enhance trust in the integrity and impartiality of democracy and political decision making.

It seeks to ensure that lobbying takes place in as open a way as possible, and in a way that protects the interests of the public, and to establish ethical standards for lobbying activity in New Zealand, with the prospect of sanctions if rules are broken.

Democracy thrives on transparency and open government—and there have been recent moves to bring more transparency to political donations, freedom of information, and members' expenses. However, professional lobbyists who seek to influence government policy or legislation, are able to operate in secret, under the radar, in the shadows of the democratic process, often undetected and unreported.

There is no public scrutiny of the activities of people who are paid to lobby parliamentarians, their staff, or public servants. Nor is there any code of ethics. This means there is no way of knowing who is engaged in the lobbying process, who is lobbying whom, and for what purpose.

And unlike many professions that are regulated through legislation and controlled by registration boards that set and maintain standards of practice and conduct, there are no clear standards or codes of conduct for lobbyists.

The secrecy and lack of any public disclosure regime around lobbying activity fuels public perceptions that some lobbyists may exert undue or improper influence over government or policy, and that the growth of lobbying has subtly shifted the political landscape in favour of corporate interests. It also undermines trust in the integrity of government and our democracy.

Lobbying is entrenched in our political system, and has become an increasingly important part of the political process. Long before Bills have reached Parliament, lobbyists will have been meeting with public servants and members seeking to influence legislation, and make amendments to it. Some lobbyists and special interest groups are even able to write and determine policy.

There is public interest in parliamentarians and the general public knowing who is engaged in lobbying activities that seek to influence public policy, and where they are directed.

This can be achieved in a relatively straightforward way, by a Register of Lobbyists and a Lobbyists' Code of Conduct. These mechanisms will provide some public disclosure of the activity of lobbyists, and set some rules around the conduct of lobbying. It will also provide some assurance to the public that lobbying is being carried out ethically and that lobbyists are not exerting undue or improper influence on Ministers and members of Parliament.

This Bill follows recommendations by the Public Governance Committee of the Organisation for Economic Co-operation and Development (OECD) by requiring the public disclosure of lobbying activity and by establishing a Lobbyists' Code of Conduct, to which lobbyists will be held accountable.

The Bill will require any paid lobbyists to be on a Register of Lobbyists. Failure to register would be an offence. The Register will be administered by the Auditor-General. Returns of lobbying activity will need to be filed with the Auditor-General and this information will be made publicly available on a website maintained by the Auditor-General's office.

Returns will disclose who is undertaking lobbying activity, who is being lobbied, who is paying for lobbying activity, the subject-matter being lobbied about, and lobbying methods used. Failure to file returns may result in individuals being suspended or removed from the Register of Lobbyists.

The Bill will require the Auditor-General to develop a Lobbyists' Code of Conduct that will clarify the standards of conduct expected of lobbyists. The Auditor-General will be given powers to investigate alleged breaches of the Code and to report his or her conclusions to Parliament. A breach of the Code may result in suspension or removal of individuals from the Register of Lobbyists.

Australia and Canada both have well-established compulsory Registers of Lobbyists. This Bill is aligned closely with the principles of the Canadian model in the information required to be disclosed and the methods of reporting.

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. The Bill will come into force on the day after the date on which it receives the Royal assent.

*Clause 3* sets out the purpose of the Bill, which is to increase the transparency of decision making by executive government by:

- establishing a Register of Lobbyists that is administered by the Auditor-General
- the development of a Lobbyists' Code of Conduct and providing powers to the Auditor-General to investigate alleged breaches of the Code.

*Clause 4* contains definitions of terms used in the Bill.

*Clause 5* states that the Act binds the Crown.

### *Registration of lobbyists and returns of lobbying activity*

*Clause 6* requires any individual engaged in any lobbying activity to be registered with the Auditor-General as a lobbyist before engaging in the lobbying activity and lists the information that must be provided to the Auditor-General to register as a lobbyist.

*Clause 7* sets out requirements for returns that must be filed with the Auditor-General by any individual or company or firm or organisation engaged in lobbying activity. Some activities and classes of persons are expressly excluded from the definition of lobbying activity.

*Clause 8* states that returns must be certified in accordance with the manner specified by the Auditor-General. This provision recognises that returns may be permitted to be filed in different forms, including in paper and electronic forms.

*Clause 9* requires any individual who, or company or firm or organisation which, files a return of lobbying activity to provide the Auditor-General with additional information if requested to do so, to clarify information in either a return or any additional information previously provided to the Auditor-General.

*Clause 10* states that the Auditor-General must establish a Register of Lobbyists containing a record of the individuals registered as lobbyists, returns, and other documents, which must be available in full to the public.

*Clause 11* provides the Auditor-General with the power to suspend or remove individuals from the Register of Lobbyists where returns are not filed or additional information is not provided as required. Suspensions and removals will need to be notified to members of Parliament and chief executives of government departments.

*Clause 12* will allow the Auditor-General to send information provided under the Act to any current or former public office holder in order for them to confirm the information or correct or complete it.

### *Lobbyists' Code of Conduct*

*Clause 13* requires the Auditor-General to develop a Lobbyists' Code of Conduct.

*Clause 14* requires any individual who, or company or firm or organisation which, is required to file a return of lobbying activity to comply with the Code.

*Clause 15* provides the Auditor-General with powers to investigate alleged breaches of the Code.

*Clause 16* provides the Auditor-General with the power to suspend or remove individuals from the Register of Lobbyists where a breach of the Code is found to have occurred. Suspensions and removals will

need to be notified to members of Parliament and chief executives of government departments.

*Clause 17* requires the Auditor-General to prepare a report of any investigation and to submit it to the Speaker of the House. The Speaker must present the report to the House forthwith after receiving it. The report can contain personal details of any individual if these are relevant to the investigation and the Auditor-General considers that publication of such details is in the public interest.

#### *Miscellaneous provisions*

*Clause 18* states that the Auditor-General may issue advisory opinions concerning the enforcement, interpretation, or application of the Act.

*Clause 19* provides that the offences listed in section 39 of the Public Audit Act 2001 apply in respect of the exercise of any power or duty of the Auditor-General under the Act. It will be an offence to—

- intentionally obstruct, hinder, or resist the Auditor-General in the exercise of his or her powers under the Act:
- intentionally refuse or fail to comply with any lawful requirement of the Auditor-General:
- make a statement or give information to the Auditor-General, knowing that the statement or information is false or misleading:
- represent directly or indirectly that the person holds any authority under this Act when that person knowingly does not hold that authority.

It will also be an offence to engage in any lobbying activity without being registered as a lobbyist with the Auditor-General.

These offences will be punishable on summary conviction—

- in the case of an individual or person required by regulations to file a return on behalf of a company or firm or organisation, to a fine not exceeding \$10,000:
- in the case of a company or organisation, to a fine not exceeding \$20,000.

*Clause 20* requires the Auditor-General to include in his or her office's annual report to Parliament a report concerning the administration of the Act for the period covered by the report.

*Clause 21* provides for regulations to be made for the following purposes:

- prescribing the manner and form of returns of lobbying activity, including requiring any person or persons who occupy any particular role or roles within a company or firm or organisation to file a return on behalf of the company or firm or organisation:
- prescribing the manner and form in which information provided in returns of lobbying activity or in a response to a request for additional information is to be confirmed or corrected or completed by present or former public office holders:
- prescribing fees for the purpose of recovering the administrative costs of the Auditor-General in performing his or her functions under this Act:
- providing for matters contemplated by this Act or necessary to give it full effect or necessary for its administration.

*Clause 22* provides for a review of the Act by Parliament every 5 years after the Act comes into force.

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*Holly Walker*

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Member's Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Lobbying Disclosure Act **2012**.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent. 5

**3 Purpose**

The purpose of this Act is to increase the transparency of decision making by executive government by—

- (a) establishing a Register of Lobbyists, which is administered by the Auditor-General: 10
- (b) the development of a Lobbyists' Code of Conduct and providing powers to the Auditor-General to investigate alleged breaches of the Code.

**4 Interpretation** 15

In this Act, unless the context otherwise requires—

**Auditor-General** means the Controller and Auditor-General appointed under section 7 of the Public Audit Act 2001

**communication** includes any oral or written or electronic communication and is not limited to communications in a formal or pre-arranged setting 20

**House** means the House of Representatives

**lobbyist** means a person who engages in lobbying activity as defined in **section 7**

**local authority** has the same meaning as in section 5 of the Local Government Act 2002 25

**organisation** includes—

- (a) a business, trade, industry, professional, or voluntary organisation:
- (b) a trade union or labour organisation:
- (c) a chamber of commerce or board of trade: 5
- (d) a partnership, trust, association, charitable society, coalition, or interest group:
- (e) a group of persons acting together to pursue objects of a national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional, or sporting character, or other similar objects 10

**payment** means money or anything of value and includes a contract, promise, or agreement to pay money or anything of value

**public office holder** means a member of Parliament and any person employed in, or who works under a contract for services for, or who is working on secondment to, a member's office and for the avoidance of doubt includes a Minister of the Crown and any person employed or working in a Minister's office 15  
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**subsidiary** has the same meaning as in section 5 of the Companies Act 1993.

## 5 Act binds the Crown

This Act binds the Crown.

*Registration of lobbyists and returns of lobbying activity* 25

## 6 Registration of lobbyists

- (1) No individual may engage in lobbying activity as defined in **section 7** unless they are registered with the Auditor-General as a lobbyist. 30
- (2) **Subsection (1)** includes individuals engaged in lobbying activity who are employed by, or who work under a contract for services for, or who are otherwise engaged by, a company or firm or organisation, whether or not the company or firm or organisation has a direct role in the lobbying activity and 35

- whether or not the lobbying activity is undertaken on its behalf.
- (3) An individual seeking to be registered as a lobbyist must provide the following information to the Auditor-General—
- (a) their full name and business address: 5
  - (b) if applicable, the name and business address of any company or firm or organisation who they are employed by, or for whom they work under a contract for services, or who they are otherwise engaged by, whether or not the company or firm or organisation has a direct role in the lobbying activity and whether or not the lobbying activity is undertaken on its behalf: 10
  - (c) if **paragraph (b)** applies, details of their role in, and duties relevant to lobbying activity they undertake for, the company or firm or organisation. 15
- (4) For the purpose of this section an individual employed by a company includes a shareholder, director, or other officer of the company and company includes any subsidiary of the company.
- 7 Returns of lobbying activity** 20
- (1) An individual or company or firm or organisation engaged in **lobbying activity** must file a return with the Auditor-General containing the information referred to in **subsection (7)** in the form and manner provided for in regulations.
- (2) For the purpose of **subsection (1)** an individual or company or firm or organisation is engaged in lobbying activity if, for payment, on behalf of any person or company or firm or organisation (the **client**) he or she or it undertakes to—
- (a) communicate with any public office holder in respect of— 30
    - (i) the development of any legislative proposal;
    - (ii) the introduction of any Bill or resolution in the House or the passage, defeat, or amendment of any Bill or resolution that is before the House;
    - (iii) the making or amendment or disallowance of any regulation as defined by section 29 of the Interpretation Act 1999; 35

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- (iv) the development or amendment or cancellation of any policy or programme of the Government of New Zealand;
  - (v) the awarding of any grant, funding, contribution, or other financial benefit by or on behalf of the Government of New Zealand; 5
  - (vi) the awarding of any contract by or on behalf of the Government of New Zealand; or
  - (b) arrange a meeting between a public office holder and any other person. 10
- (3) For the purpose of **subsection (1)** an individual includes an individual employed by, or who works under a contract for services for, or who is otherwise engaged by, a company or firm or organisation whether or not the company or firm or organisation itself has any direct role in the lobbying activity. 15
- (4) For the purpose of **subsection (1)** a company or firm or organisation includes a company or firm or organisation that employs any individual whose duties include undertaking lobbying activity on behalf of his or her employer, including where the company or the firm or organisation is in effect the client and whether or not a payment required by **subsection (2)** is made to the employee in relation to any particular lobbying activity. For the purpose of this subsection a person employed by a company includes a shareholder, director, or other officer of the company and company includes any subsidiary of the company. 20 25
- (5) Lobbying activity does not include—
- (a) any oral or written submission made to the House or any of its committees in proceedings that are a matter of public record; 30
  - (b) any communication which is restricted to a request for information.
- (6) This section does not apply to any of the following persons when acting in their official capacity: 35
- (a) members of Parliament;
  - (b) any person employed by, or who works under a contract for services for, or who is working on secondment to, any of the departments of the public service listed in Schedule 1 to the State Sector Act 1988;

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- (c) members of a local authority or any person employed by, or who works under a contract for services for, or who is working on secondment to, any such authority;
- (d) diplomatic agents, consular officers, or official representatives of a foreign government. 5
- (7) The return must set out the following information with respect to any lobbying activity—
- (a) the name and business address of—
- (i) the individual who undertook the lobbying activity and, if applicable, the name and business address of the company or firm or organisation referred to in **subsection (3)**: 10
- (ii) the company or firm or organisation who undertook the lobbying activity and the name of any individual who acted for the company or firm or organisation, including those referred to in **subsection (4)**: 15
- (b) the name and business address of the client and any person or body that controls or directs the activities of the client and has a direct interest in the outcome of the activities undertaken on behalf of the client: 20
- (c) where the client is a company, the name and business address of each subsidiary of the company that has a direct interest in the outcome of the activities undertaken on behalf of the client: 25
- (d) where the client is a company that is a subsidiary of another company, the name and business address of that other company:
- (e) where the client is a coalition, the name and address of each person or body that is a member of that coalition: 30
- (f) particulars to identify the subject-matter in respect of which the lobbying activity was undertaken, including any relevant legislative proposal, Bill, resolution, regulation, policy, programme, grant, funding, contribution, financial benefit, or contract: 35
- (g) particulars to identify the communication technique used to communicate with a public office holder:
- (h) the name of any public office holder at whom the lobbying activity was directed.

- (8) Any individual or company or firm or organisation required to file a return, must do so in the form and manner provided for in regulations, on a quarterly basis, and the return must include—
- (a) the details required by **subsection (7)** in respect of any lobbying activity undertaken in the quarter: 5
  - (b) the date of any communication or meeting:
  - (c) where any information included in previous returns is no longer correct or additional information that would have needed to be provided in a return has come to the knowledge of an individual or person acting for a company or firm or organisation undertaking lobbying activity, the corrected information or additional information. 10
- (9) For the purpose of **subsection (8)** the obligation to file a return commences 3 months after the coming into force of regulations providing for the form and manner of returns and arises in any case, at the end of each quarter thereafter, where any lobbying activity has occurred in the quarter. Returns must be filed no later than 15 working days after the last day of each quarter. 15
- 8 Certification** 20
- Every person who submits a return or other document to the Auditor-General for the purpose of complying with any requirement under this Act or regulations must certify on the return or other document, in accordance with the manner specified by the Auditor-General, that the information contained in it is to the best of their knowledge true and correct. 25
- 9 Requests for additional information**
- (1) An individual who, or company or firm or organisation which, files a return under **section 7** must provide the Auditor-General with such information as he or she may request to clarify any information which has been provided in such a return or under this section. 30
  - (2) For the purpose of **subsection (1)**, a company or firm or organisation includes any person required by regulations to file returns for the company or firm or organisation under **section 7**. 35

- (3) Information requested under **subsection (1)** must be provided within 30 days of receipt of the request.

## **10 Register of Lobbyists**

- (1) The Auditor-General must establish and maintain a Register of Lobbyists containing a record of all individuals registered as lobbyists under **section 6**, returns required to be filed under **section 7**, and other documents submitted to him or her under this Act, including any information received under **sections 9 and 12**. 5
- (2) The Register of Lobbyists may be organised in such a manner as the Auditor-General considers appropriate. 10
- (3) The information contained in the Register of Lobbyists must be made available in full to the public on a website maintained by the Auditor-General's office and in any other manner and form as the Auditor-General considers appropriate. 15

## **11 Suspension or removal of individual from Register of Lobbyists for failure to file returns or provide additional information requested by Auditor-General**

- (1) Any individual required to file a return under **section 7** or to provide additional information to the Auditor-General under **section 9** who fails to file a return or provide the information may be suspended for a period of time as the Auditor-General thinks fit, or removed permanently, from the Register of Lobbyists. 20
- (2) Any individual who is employed by, or who works under a contract for services for, or who is otherwise engaged by, a company or firm or organisation that is required to file a return under **section 7** or to provide additional information to the Auditor-General under **section 9**, may be suspended for a period of time as the Auditor-General thinks fit, or removed permanently, from the Register of Lobbyists, where the company or firm or organisation fails to file a return or to provide the information. 25 30
- (3) The suspension or removal of an individual from the Register of Lobbyists under this section is at the absolute discretion of 35

the Auditor-General after taking into account the purpose of this Act.

- (4) Before suspending or removing an individual from the Register of Lobbyists the Auditor-General may allow further time for the individual or the relevant company or firm or organisation to comply with the requirements of the Act, if the Auditor-General considers that this would be consistent with the purpose of the Act. 5
- (5) For the purpose of **subsection (2)** an individual employed by a company includes a shareholder, director, or other officer of the company. 10
- (6) Where an individual is suspended or removed from the Register of Lobbyists under this section the Auditor-General must without delay notify, in writing, the following persons: 15
- (a) every member of Parliament: 15
  - (b) every chief executive officer of a government department.

## 12 Confirmation of information

- (1) The Auditor-General may send to any current or former public office holder information provided to him or her under this Act in order that the public office holder, in the manner and form provided in regulations, can confirm its accuracy and completeness or correct or complete it. 20
- (2) The Auditor-General must report to the House on the failure by a present or former public office holder to respond to information sent to him or her under **subsection (1)** or the provision by such a person of an unsatisfactory response. 25

### *Lobbyists' Code of Conduct*

## 13 Code of Conduct

- (1) The Auditor-General must develop a Lobbyists' Code of Conduct in respect of lobbying activity. 30
- (2) In developing the Code, the Auditor-General must consult persons and organisations he or she considers are interested in lobbying activity and must call for and consider public submissions. 35

- (3) The Code must be referred to the House for consideration by a select committee prior to being finalised.
- (4) The Code is not a regulation for the purpose of the Regulations (Disallowance) Act 1989 but must be published in the *New Zealand Gazette* not less than 28 days before it becomes operative. 5

#### 14 Compliance with Code of Conduct

Any individual registered as a lobbyist, or company or firm or organisation required to file a return under **section 7**, must comply with the Code. 10

#### 15 Investigations

- (1) The Auditor-General must conduct an investigation if he or she has reason to believe, including on the basis of information received from a member of Parliament, that an investigation is necessary to identify a breach of the Code or to ensure compliance with the Code. 15
- (2) The Auditor-General may refuse to conduct, or may cease an investigation, if he or she is of the opinion that—
- (a) the matter is one that could be more appropriately dealt with according to a procedure provided for under another Act of Parliament; 20
  - (b) the matter is not sufficiently important;
  - (c) dealing with the matter would serve no useful purpose because of the length of time that has elapsed since the matter arose. 25
- (3) The provisions in Part 4 of the Public Audit Act 2001, with all necessary modifications, apply to the conduct of investigations under this section.
- (4) Before making a finding that an individual or company or firm or organisation has breached the Code, the Auditor-General must provide the individual or body with a reasonable opportunity to present their views to the Auditor-General. 30
- (5) If during an investigation the Auditor-General believes on reasonable grounds that an offence under this or any other Act has been committed, the Auditor-General must advise the authority that has jurisdiction to investigate the offence. 35

- (6) The Auditor-General must immediately suspend an investigation if he or she becomes aware that the subject matter of the investigation is also the subject matter of an investigation to determine whether a criminal offence has been committed or that a charge has been laid with respect to the subject matter, however, this subsection does not apply if the investigation or charge relates to an act or omission that is an offence by virtue of **section 19**. 5
- (7) The Auditor-General may not continue an investigation suspended under **subsection (6)** until any investigation or charge regarding the same subject matter has been finally disposed of. 10

#### **16 Suspension or removal of individual from Register of Lobbyists for breach of Code**

- (1) Where the Auditor-General finds that a breach of the Code has occurred he or she must consider whether any individual involved in the activity constituting the breach should be suspended for a period of time as the Auditor-General thinks fit, or removed permanently, from the Register of Lobbyists. 15
- (2) The suspension or removal of an individual from the Register of Lobbyists under this section is at the absolute discretion of the Auditor-General after taking into account the purpose of this Act. 20
- (3) When an individual is suspended or removed from the Register of Lobbyists under this section the Auditor-General must without delay, following the report referred to in section 17 being submitted to the Speaker, notify in writing, the following persons: 25
- (a) every member of Parliament:
  - (b) every chief executive officer of a government department. 30

#### **17 Report to Parliament**

- (1) After conducting an investigation the Auditor-General must prepare a report of the investigation, including findings, conclusions, reasons for the conclusions, whether or not he or she has decided to suspend or remove any individual from the Register of Lobbyists and the reasons in either case, and 35

submit it to the Speaker of Parliament to be presented to the House.

- (2) The Speaker must present the report to the House forthwith after receiving it.
- (3) The report may contain any details relevant to the investigation, including personal details of any individual, if the Auditor-General considers publication of such details is in the public interest. 5

### *Miscellaneous provisions*

- 18 Advisory opinions** 10
- The Auditor-General may issue advisory opinions concerning the enforcement, interpretation, or application of this Act.

**19 Offences**

- (1) Section 39(1) of the Public Audit Act 2001, with all necessary modifications, applies in respect of the exercise of any power or duty of the Auditor-General under this Act. 15
- (2) It is an offence to engage in lobbying activity under **section 7** without being registered as a lobbyist under **section 6**.
- (3) A person who commits an offence against either section 39(1) of the Public Audit Act 2001 by virtue of **subsection (1)** or **(2)**, is liable on summary conviction— 20
  - (a) in the case of an individual or person required by regulations to file a return on behalf of a company or firm or organisation, to a fine not exceeding \$10,000;
  - (b) in the case of a company or organisation, to a fine not exceeding \$20,000. 25

**20 Annual report to Parliament**

- (1) The Auditor-General must include in his or her office's annual report to Parliament a report concerning the administration of this Act for the period covered by the annual report. 30
- (2) The Auditor-General may, at any time, prepare a special report to Parliament concerning any matter under this Act if, in the opinion of the Auditor-General the matter is of such urgency or importance that a report on it should not be deferred until the next annual report. 35

## 21 Regulations

The Governor-General by Order in Council may make regulations for the following purposes:

- (a) prescribing the manner and form of returns required to be filed under **section 7**, including requiring any person or persons who occupy any particular role or roles within a company or firm or organisation to file a return on behalf of a company or firm or organisation: 5
- (b) prescribing the manner and form in which information is to be confirmed or corrected or completed under **section 9**: 10
- (c) prescribing fees for the purpose of recovering the administrative costs of the Auditor-General in performing his or her functions under this Act:
- (d) providing for matters contemplated by this Act or necessary to give it full effect or necessary for its administration. 15

## 22 Review by Parliament

A comprehensive review of the operation of this Act must be undertaken every five years after the Act comes into force by a committee of the House designated or established for that purpose. 20

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