

Hon Ginny Andersen, Minister of Justice

**Update on the Political Lobbying Project**

<b>Date</b>	01 August 2023	<b>File reference</b>	LOB-08-02
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<b>Action sought</b>	<b>Timeframe</b>
<b>Agree</b> that this briefing will be proactively published on the Ministry's website	3 August 2023
<b>Forward</b> a copy of this briefing to the Prime Minister's office	3 August 2023

**Contacts for telephone discussion (if required)**

<b>Name</b>	<b>Position</b>	<b>Telephone</b>		<b>First contact</b>
		<b>(work)</b>	<b>(a/h)</b>	
Hayley Denoual	Manager: Electoral and Constitutional	Section (9)(2)(a)	Section (9)(2)(a)	x
Anna Johnston	Acting General Manager: Civil and Constitutional	Section (9)(2)(a)	Section (9)(2)(a)	

**Minister's office to complete**

<input type="checkbox"/> Noted	<input type="checkbox"/> Approved	<input type="checkbox"/> Overtaken by events
<input type="checkbox"/> Referred to: _____		
<input type="checkbox"/> Seen	<input type="checkbox"/> Withdrawn	<input type="checkbox"/> Not seen by Minister
<b>Minister's office's comments</b>		

**[In Confidence]**

## **Purpose**

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1. This briefing provides an update on the approach that we are taking on a voluntary code of conduct for third-party lobbyists and the wider regulatory review of political lobbying.

## **Executive summary**

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2. This briefing is an update on the political lobbying work. This includes development of a voluntary code of conduct for political lobbyists and a longer-term review of options for regulating lobbying.
3. The Ministry is currently in the scoping phase of this work, guided by the OECD lobbying principles of fair access, transparency, integrity and accountability.
4. A core consideration is how to strike the right balance between enabling legitimate advocacy that benefits society and protecting the public interest in transparency around these activities. Work will need to include clarity on definitions of political lobbyists, lobbying activities and people who are lobbied. It will also need to address the specific issues facing New Zealand, explore Treaty of Waitangi implications and understand how this work fits in with other overlapping policy areas, such as work to mitigate foreign interference. Understanding what other countries are doing and how effective their approaches have been is also important.
5. Targeted initial engagement with a range of stakeholder groups is running through to September 2023. This engagement is being undertaken in accordance with the guidelines for the public sector on external communications during the pre-election period.
6. The priority is work on a voluntary code. Three initial meetings have been held with government relations consultants to identify the level of interest in a code, and what a code might cover. On balance there is support for a code that addresses lobbying activities and behaviours, but does not single out any one profession or group of people. We are now planning for more meetings to discuss potential code options.
7. Targeted meetings with interested groups are also planned in August and September on the wider regulatory project, to gather perspectives on the issues that need to be addressed. This includes hui with Māori and iwi groups to explore Treaty implications. Information from these meetings will inform policy options development.
8. We will report back by 28 February 2024 with the outcome of the work on the voluntary code of conduct and wider policy options for addressing issues with lobbying activities.

## **Background**

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9. On 3 April 2023, the Prime Minister announced several measures to support greater transparency around lobbying at Parliament. The Ministry was commissioned to lead on two of these:
  - Supporting “third-party lobbyists” to develop a voluntary code of conduct to enhance transparency.

- Leading a substantive review of the policy options for regulating lobbying activities, including a public consultation process. This review could extend to options around decision makers who are lobbied.
10. The Prime Minister also noted he would write to the Speaker suggesting removal of Parliamentary swipe card access for lobbyists, business and union representatives. In addition, the updated Cabinet Manual would make clear that Ministers' conduct and decisions should not be influenced by the prospect or expectation of future employment with a particular organisation or sector.

### **A principled approach to the work**

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11. We are currently in the scoping phase of the work, guided by the OECD recommended principles for countries undertaking lobbying regulatory reviews. These are:
- **Fair access and balanced participation** - ensuring opportunities for diverse voices to participate in the policy-making process and preventing undue influence or capture of public decision-making by powerful interests.
  - **Transparency** - making it clear **who** is behind lobbying, who is being lobbied, and the issues being advocated to ensure public trust in the democratic system.
  - **Integrity** - avoiding conflicts of interest, promoting ethical standards and disclosure of financial relationships between lobbyists and public officials.
  - **Accountability** - holding lobbyists and public officials to account for their actions including sanctions for non-compliance or unethical behaviour.
12. These principles underpin both the policy development and stakeholder engagement parts of this work.

### **Issues that will need to be considered in the project**

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13. Many of the issues that will need to be worked through are similar for both the voluntary code and the longer-term regulatory project.

### **Definition of lobbyists**

14. A previous attempt to regulate lobbying through the Lobbying Disclosure Bill (a member's bill) in 2012 was unsuccessful. This was primarily due to a lack of clarity about who would be captured, and the potential for too broad a definition to have a chilling effect on the democratic process.
15. There is a lack of international consensus around definitions of political lobbying. In practice, any person who aims to influence decision making at any level could be considered a lobbyist. To define scope, the project will need to determine the activities that could be defined as political lobbying, who political lobbyists are, and who are the people being lobbied.

## **Implications of lobbying in New Zealand**

16. The ability for people to contact Ministers, elected representatives and senior government officials to discuss matters affecting them is an important and legitimate feature of New Zealand's democracy. Government relations consultants, legal advisors, industry and stakeholder organisations can play an important role in these 'lobbying' processes. They enable a range of perspectives to be considered in policy making, provide knowledge and expertise, and alert the public and decision makers to problems.
17. Issues can arise when there is a real or perceived imbalance in who gets access to decision makers, or uncertainty about who is lobbying who, and what about. This can lead to a lack of trust in democratic process and could ultimately affect social cohesion.
18. We are exploring the nature and degree of the issues around lobbying in New Zealand, including:
  - Voices of those with limited resources or connections can be marginalised.
  - Decision makers can become over-reliant on lobbyist research or perspectives.
  - Uncertainty about the motivations, origins and influence of lobbyist groups can erode trust in democratic process.
  - Dissemination of biased information can reduce the public's ability to critically engage in matters that affect them.
  - Movement between roles in government and lobbying agencies can result in misuse of privileged information and unfair access.
  - Some behaviours could be unethical or illegal, for example if lobbyists falsely claim to represent groups when they do not, use bribery or donations to obtain special treatment, or deliberately manipulate public opinion with false information.

## **Links with wider policy work on trust in democracy and social cohesion**

19. There are many mechanisms to protect public trust in New Zealand's democratic system. For example:
  - The Open Government Partnership work overseen by the Public Service Commission is looking at ways to improve public access to information.
  - The Department of the Prime Minister and Cabinet is coordinating the cross-government Countering Foreign Interference Work Programme, which includes a focus on promoting the transparency of other States' activities in New Zealand.
  - The Department of Internal Affairs is consulting on ways to regulate harmful use of media platforms in New Zealand.
  - Mechanisms like the Cabinet Manual and government agency codes of practice guide people who are lobbied on ways to deal with lobbying and management of conflicts of interest.
  - Laws are in place around bribery, corruption and political financing.

20. This project will need to be cognisant of the range of mechanisms already being used and where and how any new options to address issues with political lobbying fit into the wider system.

### **Treaty and Māori engagement considerations**

21. A unique consideration for New Zealand is how the Treaty relationship between the Crown and Māori fits with this work. An understanding of the difference between Māori as lobbyists and as Treaty partner will be important. In addition, Crown obligations around equity and active protection could be explored, particularly, how capture of decision making by lobbyists could impact on Māori rights to consultation, representation or equitable outcomes under the Treaty.

### **The experience of other countries**

22. Many countries set standards and guidelines governing people who are lobbied, as well as measures around bribery, corruption, political donations and conflict of interest. Our initial work indicates only a small number of countries set standards for political lobbying activities.
23. A 2021 OECD report, *Lobbying in the 21<sup>st</sup> Century* noted that most regulatory approaches in OECD countries are confined to lobbyist registries and codes of conduct, and do not cover the full spectrum of modern lobbying practices and risks. Understanding what has worked and what has not in other countries will be key.

### **Progress so far**

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24. Effective stakeholder engagement is critical to the success of this project. We have initiated a transparent and open process with stakeholders to explore the issues raised in this paper. In May 2023, the Ministry invited around 500 stakeholder agencies to register their interest in this work via its website. Over 180 people or organisations have registered.
25. We are posting updates on the Ministry of Justice website and send out newsletter updates every 1-2 months. An information slide-pack (copy attached) on the website explains the project and the issues it will need to address.
26. Meetings are now underway on the voluntary code the wider policy work. All engagement is being managed in accordance with Te Kawa Mataaho's guidelines on pre-election period communications. This includes engaging only with targeted stakeholder groups (not individuals) who have registered their interest in the project. No policy proposals will be discussed. All summaries of meetings including attendee lists will be published online.

### **Progress on the voluntary code of conduct**

#### *Meetings with government relations consultants on a code of conduct for third-party lobbyists*

27. The immediate priority is facilitating discussions on a voluntary code with third-party lobbyists to identify the level of interest in a code, and what a code might cover.
28. In mid-July we held three initial meetings with 32 government relations consultants in Wellington, Auckland, and online. Representatives from the Public Relations Institute of

New Zealand Te Pūtahi Whakakakau Tūmatanui o Aotearoa (PRINZ) also attended and shared their experiences with their industry code of ethics for public relations and communications professionals. The meetings were well attended by people from many of the main consulting firms. A summary of these meetings will be publicly available on the Ministry's website.

29. Points to note from the meetings are:

29.1. There is a mixed reaction to the idea of a voluntary code. On balance, attendees thought that a code may help improve public understanding of, and trust in the work lobbyists do. However, they also questioned how effective a code is likely to be, as in their view, New Zealand does not have the same problems with lobbying as other countries. They also thought the issue is more about public trust in government.

29.2. Attendees also said that there are a lot of activities and behaviours that can be considered 'lobbying'. Many of these activities (like helping people to access and navigate complex government processes) are helpful to good democratic process.

29.3. Most agreed that the code should aim to improve public trust in any organisation that tries to influence decision-making rather than singling out any one group. They thought that the code could also include industry and union bodies, interest groups, academics and businesses.

29.4. Attendees also discussed the different forms a code could take. It could be a simple code of ethics or engagement expectations through to a code that sets enforced rules and requirements for registration. Many attendees favoured a higher-level code of ethics as a starting point.

29.5. From a practical perspective, attendees noted that even a simple code based on ethical standards could be challenging to implement if it applied to a wide range of lobbyists because there is no industry organisation able to administer it.

29.6. Suggestions for who might develop and administer a code included; industry creating a group to develop a code, inviting an existing industry association, or using a central agency such as the Ministry of Justice or the Public Service Commission.

30. Based on this initial feedback, we are developing options for a voluntary code and will continue discussions with both the government relations consultants and a wider group of stakeholders on the way forward over the coming months.

**Progress on the longer-term regulatory project**

*Meetings with stakeholder groups on the wider policy issues*

31. We are holding ten online forums with targeted stakeholder groups in August and September 2023. These meetings aim to surface the issues that need to be addressed in the wider regulatory project. Meetings will be held with think tanks and academics industry associations, interest groups (including transparency groups), businesses, consultant lobbyists and Māori/Iwi organisations. Over 60 attendees have registered so far, with more expected to register over the coming weeks.

32. One of these meetings will be a hui with Māori and Iwi groups in September to discuss potential Treaty implications. This includes exploring the difference between Māori as lobbyists and as Treaty partner, and the Crown's obligations to ensure Māori rights to consultation, representation and equitable outcomes. We have made contact with 48 Māori groups but only a small number of these are likely to attend.

#### *Interviews with public office holders and officials*

33. An understanding of the issues that people who are lobbied face is also important. Subject to budget, after the election we anticipate arranging a small number of deep, qualitative interviews with Ministers, former Ministers, politicians, and senior Government officials and board members.
34. We may also conduct anonymous surveys of wider stakeholder groups to gather New Zealand specific illustrative examples of issues generated by political lobbying activities.
35. It is likely that we will commission an independent researcher to conduct some or all of this work. Interviews and surveys would be undertaken on a non-identifiable basis.

#### **Next steps**

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36. By 28 February 2024, we will report back with:
- the outcome of the work on the voluntary code.
  - policy options for addressing issues with lobbying activities in New Zealand and proposals for substantive public consultation.
37. At this report-back we intend to seek your agreement to proceed with the development of a consultation document to take to Cabinet seeking approval to proceed with public consultation on the options.

#### **Proactive Release**

38. As part of ensuring a transparent and open process, we recommend that you agree to proactively release this briefing on the Ministry of Justice website.

#### **Recommendations**

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39. We recommend that you:
1. **Note** that on 3 April 2023, the Prime Minister announced that Ministry of Justice would initiate work on two measures to increase political lobbying transparency:
    - Supporting "third-party lobbyists" to develop a voluntary code of conduct.
    - Leading a substantive review of the policy options for regulating lobbying activities, including a public consultation process.
  2. **Note** that the Ministry is currently in the scoping phase of this work. Considerations include definitions of political lobbyists and people who are

lobbied, identifying the issues for New Zealand, Treaty implications and overlaps with other policy areas.

3. **Note** that as part of the scoping work the Ministry is running an open and transparent engagement process which includes a series of targeted workshops through to September 2023 with different stakeholder groups who have registered their interest.
4. **Note** that this engagement is being undertaken in accordance with the guidelines for the public sector on external communications during the pre-election period.
5. **Note** that the first three meetings with government relations consultants have been held on the voluntary code of conduct. On balance there is support for a code that addresses lobbying activities and behaviours rather than a particular group, but there is more work to do on the options.
6. **Note** that the Ministry will report back by 28 February 2024 on:
  - the outcome of the work on the voluntary code.
  - policy options for addressing issues with lobbying activities in New Zealand and proposals for substantive public consultation.
7. **Agree** that this briefing note will be proactively published on the Ministry of Justice's website
8. **Forward** a copy of this briefing to the Prime Minister's office

YES/NO

YES/NO

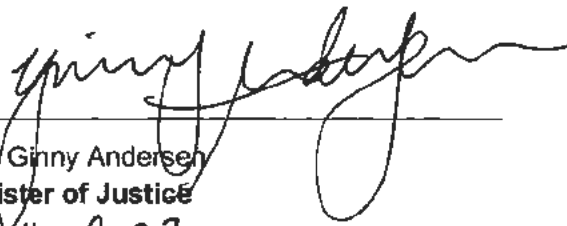




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Sam Kunowski  
**Acting Deputy Secretary policy**

 APPROVED      SEEN      NOT AGREED



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Hon Ginny Andersen  
**Minister of Justice**  
Date 16/8/23

**Attachments:** Information slidepack on the political lobbying project published on the Ministry of Justice website