SUBMISSION

STRATERRA™
NATURAL RESOURCES OF NEW ZEALAND

Submission to the Government Administration Select Committee on the

"LOBBYING DISCLOSURE BILL" (SEPTEMBER 2012)

INTRODUCTION

1. Straterra[1] welcomes the opportunity to submit on the Lobbying Disclosure Bill. As an advocacy body for the New Zealand minerals sector, and funded to do that by our 49 members[2], Straterra falls squarely within the definition in the Bill of a "lobbyist".

2. A key function of Straterra is the provision of policy input and proposals to the Government. In most cases, this occurs in response to government policy and legislative programmes. Meetings and other communications with Ministers and their Office staff, defined in the Bill as "public office holders", are an integral part of Straterra's strategy for delivering the above.

3. As well, Straterra has been invited or appointed to many government advisory panels or technical groups, to provide policy and other advice to the Government.

4. We believe we have made a constructive and useful contribution to this work, including on: access to Crown minerals, tax, royalties, climate change, resource management, conservation issues, marine legislation, economic policy, environmental reporting[3]. We will continue to strive to provide policy and other advice, on behalf of our members and the sector, in an ethical way.

5. We also believe that our advocacy, while conducted in our sector's direct interests, is also in the wider interests of New Zealand, in terms of encouraging and enabling environmentally and socially-responsible economic development.

6. For the record: Straterra does not seek privileged access to Parliament; does not provide hospitality for public office holders (except as guests at Straterra industry events); does not provide gifts to public office holders; and has among principles listed in our Charter/code of ethics, that we conduct ourselves in a "responsible, constructive, reasonable and transparent way".[4]

7. Straterra, therefore, considers it unfortunate that "lobbying" has been painted in the Bill in a negative light. We speculate that this emotionally-charged approach has led to a number of

[1] About Straterra Inc. http://www.straterra.co.nz/About+Straterra
[2] View Straterra members http://www.straterra.co.nz/Industry+Links
[3] Examples of Straterra policy advice http://www.straterra.co.nz/Straterra%27s+Submissions
[4] Straterra Charter http://www.straterra.co.nz/uploads/files/our_charter.pdf

inappropriate, discriminatory, and unworkable provisions in the Bill. That is not to say that no regulation is warranted. We make a number of proposals for amendment.

8. Straterra wishes to be heard by the Government Administration Select Committee on our submission.

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EXECUTIVE SUMMARY

9. The intent of the Lobbying Disclosure Bill is logical – there is a general desire for openness in democracy[5]. That said, significant amendment to the Bill will be necessary if this legislation is to be workable, and fair to all. We make a number of recommendations to achieve that.

10. It is also reasonable to ask whether this Bill is necessary at all, as the submissions by Business New Zealand, and Saunders Unsworth have done.

11. If the Bill does proceed, we propose: to redefine lobbyists as advocates; to present advocacy in a positive light; to expand the scope of the term to include those who are not paid to advocate, and those who advocate for their own interests on a matter of public concern; to delete the requirement for advocates to register; to place the burden of filing returns on advocacy with the public office holder; to expand the list of matters where advocacy disclosure is required; and to require both public office holders and advocates to comply with a Code of Conduct.

12. Conducted appropriately, advocacy plays an important and useful role in the making of policy and legislation in New Zealand. It is a legitimate component of participatory democracy, even

[5] While respecting the legitimate commercial sensitivities of businesses

necessary for democracy to be effective. That notion should be reflected in the Bill, and the inappropriate and pejorative characterisation of advocacy should be removed.

13. For administrative simplicity, the burden for compliance with filing returns should fall on public office holders, who are much fewer in number than advocates, and who are more frequently engaged in advocacy than advocates.

14. People who are not paid to advocate on behalf of a cause, e.g., celebrities or philanthropists; as well as people who advocate to public office holders for their own cause, e.g., an immigration application or an ACC claim, should also fall within the scope of the Bill, to achieve the purpose of the Bill, which, in essence, is to avoid "secret deals" being done between advocates and public office holders, on matters of public concern. For the same reason, the scope of the matters covered in the Bill should be expanded, to include all relevant situations where inappropriate conduct could occur.

15. Logically, a Code of Conduct should apply to both parties engaging in advocacy - the advocate and the public office holder.

RECOMMENDATIONS

16. Straterra recommends the Government Administration Select Committee to:

a) Note Straterra's support for the overall intent of the Lobbying Disclosure Bill, to promote openness in democracy;

b) Note that Straterra also questions whether this Bill is necessary, in light of submissions made by others to the Select Committee;

c) Note that Straterra's Charter requires Straterra to behave in an ethical way, consistent with the intent of the Bill;

d) Note Straterra's concern that the General Policy Statement to the Bill takes a negative approach to "lobbying" and "lobbyists", and to agree that the wording of this text is, therefore, inappropriate and unprofessional;

e) In relation to Rec. (d), agree to replace the term "lobbying" with "advocacy", and "lobbyist" with "advocate", and the verb "to lobby" with "to advocate", everywhere these terms occur, to bring a neutral and appropriate tone to the Bill;

f) Agree that advocacy can and does play an important, even a necessary role for democracy to be effective, and that this aspect of advocacy should be reflected in the Explanatory Note to the Bill;

g) Agree to rename the Bill, the Advocacy Disclosure Bill;

h) Agree to define in clause 4 of the Bill the terms "advocate" and "advocacy" to capture every person who meets, writes to, corresponds with, talks to, or in any other way communicates with a public office holder, on a matter of public concern or interest, whether or not they are paid to undertake that activity, and whether they are acting on another's behalf, their employer's behalf, or their own behalf, and to make the necessary amendments to clause 7 and other relevant clauses of the Bill;

i) In relation to Rec. (h), agree to delete the definition of "lobbyist" from clause 4;

j) Agree to amend clause 3 on the purpose of the Bill with the following text: "The purpose of this Act is to increase the transparency of decision-making by executive government by – (a) establishing *an obligation on all public office holders to file returns on advocacy activity, and* (b) the development of *an Advocacy* Code of Conduct, and providing powers to the Auditor-General to investigate alleged breaches of the Code";

k) Agree to expand the scope of clause 7 (2) (a) to include: the exercising of a Minister's powers and functions under existing legislation; the administration of legislation, regulations and policies by agencies; co-ordination of processes under different pieces of legislation; the appointment of people to technical advisory groups, Crown entities and the like; and provision of advice on issues management, communications and related strategy;

l) Agree to amend clauses 7 (7) and 7 (8) to place the obligation of filing returns to the Auditor-General on public office holders, and not on advocates;

m) Agree that there would be cases where the names of advocates would be withheld from the public record, e.g. people with mental illness or disability, name suppression ordered by a court, victims of abuse or a crime;

n) In relation to Recs. (j) and (l), agree to delete clauses 6, 10, 11 and 16 because it will be unnecessary to establish or maintain a register of advocates;

o) Agree to amend clause 13 to provide for the Advocacy Code of Conduct to apply to both advocates and public office holders; and

p) In relation to Rec. (o), agree to amend clause 14 on compliance with the Code of Conduct to say: "*Any public office holder filing* a return under section 7, *and any advocate identified in those returns*, must comply with the Code".

DISCUSSION

Fairness of approach

17. The General Policy Statement to the Bill dwells overly on the negative aspects of "lobbying", in making a number of emotionally-charged statements. For example: "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".

18. Later in the text: "Lobbying is entrenched in our political system … 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 … are even able to write and determine policy".

19. And further: "A Lobbyists' Code of Conduct … will provide some assurance that lobbying is being carried out ethically and that lobbyists are not exerting undue or improper influence on Ministers and Members of Parliament".

20. The implication is very clearly that lobbying is wrong, even subversive of democracy. We say this implication is unjust and unprofessional. (It is also an affront to Straterra, whose staff and members must meet the high ethical standards set out in our Charter.)

21. Lobbying could include, and has routinely included, campaigning for more funding for native species conservation, or sustainable management of our oceans, or a workable approach to climate change policy. Many people would call these things a social good, and, within that construct, lobbying also would have to be considered a social good.

22. In Straterra's case, our advocacy to public office holders has formed an essential part of improving their understanding of prospecting, exploration and mining, which, in turn, is essential for New Zealand to develop better legislation, regulation and policy in on natural resource issues. In addition, there is a seamless transition between this work and our advocacy to officials, where the same considerations apply.

23. On the last, Straterra participates frequently in advisory, relationship or technical groups or panels with, for example, the Ministry of Business, Innovation and Employment (Crown minerals permitting, and research strategy); Ministry for the Environment, and the Environmental Protection Authority (EEZ regulations); MfE, and the Ministry for Primary Industries (freshwater); Department of Conservation, and MPI (Maui's dolphin); and Straterra is close to finalising a similar arrangement with DOC to work on operational and operational policy matters.

24. In these settings, and generally, Straterra and members of Straterra provide detailed, technical advice and expertise to inform government policy processes and programmes. No one else in New Zealand outside of industry is able to provide that advice; therefore, this industry input, and the manner in which it is sought or offered, is appropriate, useful, helpful, and necessary for government to develop sensible, practical and workable policy.

25. The General Policy Statement should be rewritten to provide a more accurate, fair and just portrayal of lobbying, including the positive and beneficial aspects described. That could begin with replacing the pejorative label "lobbying" with the neutral term "advocacy", and "lobbyists" with "advocates", and the verb "to lobby" with "to advocate".

Problem definition

26. At issue[6] is the avoidance of "secret deals" being done between public office holders and the people who come to see them, or write to them, or phone them, or otherwise communicate with them - regardless of the subject matter (provided it is of public concern), and regardless of who the person is that does the advocacy, whether or not they are paid to advocate, and whether or not they are representing their own interests, their employer's, or someone else's.

27. The examples of overseas legislation provided to us for our information by the proponent of the Bill, Holly Walker MP, are unhelpful in this respect, and provide little if any useful guidance.

28. We believe that everyone who meets, writes to, corresponds with, talks to, or in any other way communicates with a public office holder, on a matter of public concern, is an advocate. It is a matter for debate as to whether or not all of these people, who could run into the thousands, should be registered and required to file returns. We address these issues later in this submission.

[6] Cf. Holly Walker MP submission to the Government Administration Select Committee, 26 Sept 2012

The issue of payment

29. In light of the above arguments, not all people carrying out "lobbying activity", as defined in the Bill, or more generally, would be captured in clause 7; therefore, many people who carry out advocacy, as Straterra defines the term, would not need to be registered. That is unfair, inequitable, and would fail to achieve the purpose of the Bill.

30. To elaborate, unpaid persons, e.g., philanthropists, celebrities, could advocate on behalf of an environmental non-governmental organisation to public office holders on a legislative proposal, and would not be captured by the Bill, while Straterra would be captured. Both sets of representatives have a legitimate right to advocate to public office holders on the same public policy issue, and would have useful contributions to make, however, this Bill would have each set treated differently. That is obviously wrong.

31. In the same vein, should clause 7 (2) of the Bill apply also to Directors of the Board of an advocacy body who are not paid to undertake the activity (cf. clause 6 (4)), or people working for or representing voluntary organisations/iwi organisations, who are not paid to undertake the activity? What about members of technical advisory groups appointed by the Government, whether or not they are paid? What about people who are advocating to public office holders for their own cause, in particular, on controversial matters such as an immigration application, or an ACC claim?

32. Clause 7 (2) is an overly narrow provision. A broader definition of advocate is required.

Scope of activities regulated under the Bill

33. Clause 7 (2) (a) omits listing a number of matters that could be of public concern that should be caught by the Bill, including: the exercising of a Minister's powers and functions under existing legislation; the administration of legislation, regulations and policies by agencies whether or not under Ministerial direction; co-ordination of regulatory processes under different pieces of legislation; the appointment of people to technical advisory groups, Crown entities and the like; and the provision of advice on issues management, communications and related strategy, and the like.

34. The rationale is that advocacy under these categories, if unregulated, could include the inappropriate conduct the Bill's proponents are seeking to eliminate. Those matters, and no doubt there are others we have not considered, should fall within the definition of advocacy.

Responsibility for filing returns

35. We find it inappropriate that the burden of filing returns should be placed on the advocate, in the context of our broadened approach. As argued, that could affect a wide range of people, advocating on a very wide range of matters, some of whom may do this once or only a few times in their lives. Compliance could be onerous for those people, as well as being onerous to enforce. In particular, most advocates would find themselves filing quarterly nil returns.

36. On the other hand, by the very nature of their role, public office holders will be very frequently engaging with advocates. It would make much more sense to place the burden of filing returns on public office holders who are much fewer in number than advocates. That could entail quarterly returns to the Auditor-General for all instances of advocacy to a public office holder.

37. The above approach would support two fundamental principles of democracy: that it is a right of all New Zealanders to be able to communicate without undue hindrance with public office holders; and that it is a responsibility of all public office holders to ensure that such communication occurs in an appropriate way.

Register of advocates, and Code of Conduct for advocates

38. For the reasons argued above, it will be very impractical for the Auditor-General to "establish and maintain a Register of Lobbyists" (clause 10), and receive quarterly returns, most of them nil returns, from the thousands of people who are identified as "lobbyists", or advocates.

39. Accordingly, it would make much more sense for each public office holder to maintain their own register, for ease of filing quarterly returns to the Auditor-General who would then organise that information as they see fit. A Minister's Office could simply maintain a register.

40. Under our proposed approach, the obligation for compliance would be on the public office holder, and the public office holder would be sanctioned or penalised in some way for non-compliance (cf. clause 11).

41. Following our logic, the public office holder would have to comply with a Code of Conduct (cf. clause 14). Of course, that requirement could extend also to advocates.