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Tēnā koe Max

**Feedback on *A Balance of Voices: Options for the regulation of lobby in New Zealand, version 2***

I am writing on behalf of Trust Democracy, an incorporated society that was established in 2019 to strengthen public discourse, education and research about democracy in Aotearoa New Zealand.

Trust Democracy would like to thank the Health Coalition Aotearoa for taking a lead on the important issue of lobbying and its regulation. We agree that lobbying needs to be regulated and that mandatory, legislative measures are needed. The voluntary code being developed by the Ministry of Justice will likely be ineffective and is insufficient.

We would also like to thank you, Max, for the *A Balance of Voices* report, which comprehensively describes and analyses international approaches and their applicability for the New Zealand context.

Trust Democracy agrees that Te Tiriti o Waitangi issues need to be explored and considered with Māori before progressing this work. We look forward to seeing the results of the work that is underway.

**Definitions, scope and other issues**

The report frames the issues well, provides clear definitions (anyone from a reasonably well-resourced organisation; formal, prearranged contact; with an MP, a member of their staff, or a senior (Tiers 1-3) public servant; regarding a government law, policy or award of funds) and the rationale for the scope of what is proposed, as well as contextual information (e.g. about levels of inequality). We agree with all this but would add two things.

Firstly, compared with other democracies, New Zealand's system of government has few checks on the power of the Executive. For example, while we have comparatively short electoral cycles and proportional representation, we have:

- A small and under-resourced Parliament
- A party system that strongly disciplines what MPs say publicly and how they vote
- No upper house
- A non-entrenched and piecemeal 'constitution' that includes rules and conventions for policy and decision making that the Cabinet can change at will without public consultation
- Governments that overuse Parliamentary urgency to fast-track legislation and limit public scrutiny
- A 'hollowed-out' public service with capability and capacity issues
- Considerable reliance on private-sector consultations for policy advice

- A financially stressed (barely viable) and fragmented fourth estate that does not report on many areas of central government policy and decision making, and provides almost no coverage of local government
- Civil-society organisations that are careful about publicly criticising the Government for fear of losing government service contracts or their charitable status.

Given the relatively ‘unbridled power’ of the NZ Executive, we should expect it to be the focus of efforts well-resourced actors to advance their particular interests. This strengthens the case for a much stronger lobbying regime. However, even a strong and transparent regime will not be enough. Trust Democracy believes that it is also necessary to improve the integrity of NZ’s policy and decision making processes, and to strengthen accountability mechanisms (see below).

Secondly, while we agree with the focus on Government lobbying, Trust Democracy notes long-standing concerns about lobbying and the undue influence of well-resourced vested interests in the local government context. If possible and practical, proposals to regulate lobbying should cover both central and local government.

### Support for the Irish system

Trust Democracy believes the Irish system’s balance is about right for NZ. Application to a person(s) representing a company with 10 or more staff or a representative/advocacy body with at least one paid staff member (whether full- or part-time) or any third-party engaged to represent the interests of these types of organisations does not seem overly burdensome given that activities such as making submissions to select committees are excluded from the disclosure regime.

### Further thresholds?

Trust Democracy does not believe there is any need to further loosening the regulatory net by, for example, increasing employee thresholds or adding financial limits.

### NGO and third-party lobbyists

Trust Democracy supports a simple but comprehensive regime. It should include both NGO and third-party lobbyists.

### Self-employed people

In the interests of a comprehensive regime, Trust Democracy supports further work on how lobbying by self-employed people might be practically covered by the regime but this work should not hold up efforts to establish a regulatory regime. In the short term, strengthened disclosure requirements for ministerial meetings might be sufficient.

### Key officials and informal, unplanned contact

Trust Democracy supports limiting the regulatory net to formal, planned contact with Tier 1, 2 and 3 public officials as most public service agencies are strongly hierarchical. Given their influence in many NZ agencies, we believe there is also a case for including Principal Analysts/Advisors.

While we are concerned that lobbyist already target less senior officials, these contacts should be regulated through public service codes of conduct.

## Subjects of lobbying

Trust democracy supports the proposal that the designated public officials (DPOs) should be MPs, members of their staff, and senior (Tiers 1-3) public servants (and, perhaps, Principal Advisors).

As noted above, application of the regime to local government should be considered too. DPOs in this case would be elected officials, their staff and Tiers 1-3 officers.

## Stand-down periods

Trust Democracy supports a 3-year stand-down period for DPOs.

## In addition to a lobbying register, a code of conduct and a stand-down period

Trust Democracy believes that the standard measures of a lobbying register, a code of conduct and a stand-down period are all necessary and should be progressed.

We have already noted that transparency measures such as registers will be insufficient given the large power imbalances in New Zealand and weak institutional architecture. We suggest two additional democratic measures be considered.

Firstly, we support much greater use of deliberative methods for developing policy because they are, by design, much less vulnerable to lobbying and capture by vested, ideological or partisan interests. They are also a reliable and democratic way of identifying areas of common ground and policies that can be considered to be in the public interest.

Secondly, additional accountability measures are needed for when new, or amendments to, policies, programmes or laws are not in the public interest.

One such measure has recently been advocated for by the former UK Conservative Party minister, Rory Stewart. This would see the establishment of a 'People's Upper House' (PUH) to scrutinise programmes, policies and laws. If not considered in the public interest, the PUH would have the power to send the matter back to the lower house for a secret (conscience) vote. This would stop political parties (or other powerful interests such as donors) from being able see, or control, how MPs voted. The PUH would comprise citizens selected by sortition and supported to conduct quality deliberation as in a policy citizens' assembly.<sup>1</sup> Government leaders would think twice before ramming measures that were not in the public interest (e.g. the repeal of the Smokefree legislation) through the (Lower) House (e.g. under urgency) if these measure would also be considered by a PUH. The PUH would protect Parliament from capture by powerful interests.

Another mechanism that could be used to strengthen accountability is to empower constituents to recall their MP and require an by-election. Recall is available in a number of jurisdictions, including the UK since 2015. A MP is typically recalled if they have been judged guilty of misconduct and a certain percentage (say 10%) of registered voters sign a recall petition. Six UK MPs have been recalled to date and a further five have left voluntarily when it became clear they would be recalled.<sup>2</sup> Recall would give citizens the democratic 'teeth' to sanction breaches of MPs codes of conduct that should cover lobbying.

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<sup>1</sup> Listen to Rory Stewart and Alistair Campbell's 'The Rest is Politics' podcast , episodes 195 (23 November 2023) and 199 (7 December 2023), and David Runciman's 'Past, Present, Future' podcast, episode 37 (18 January 2024) with Rory Stewart on 'What does it mean to be a 21<sup>st</sup>-century tory?'

<sup>2</sup> [https://en.wikipedia.org/wiki/Recall\\_of\\_MPs\\_Act\\_2015](https://en.wikipedia.org/wiki/Recall_of_MPs_Act_2015)

Please do not hesitate to contact me if you have any queries or would like to discuss any points.

Ngā mihi, na

A handwritten signature in black ink, appearing to read "Simon Wright".

Simon Wright  
Chair