

8 April 2024

Lobbying Project Team
Ministry of Justice

By email: electoral@justice.govt.nz

Feedback on the draft voluntary lobbying code of conduct

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on the Ministry of Justice’s draft voluntary lobbying code of conduct (**Code**).
- 1.2 This feedback has been prepared with input from the Law Society’s Public Law Committee.¹

2 General comments

- 2.1 We appreciate this Code is intended to form part of a voluntary, self-regulated regime, and there will be no enforcement mechanisms to encourage compliance. Nevertheless, the Code sets expectations for the behaviour and conduct of lobbyists, and therefore, it is desirable to have clarity regarding those expectations, as well as the scope and the application of the Code. On that basis, we have proposed some changes to improve the clarity of the Code.
- 2.2 If a more formal regulatory regime is to be considered in future, the Ministry would need to consider the interrelationship between that regime and other regulatory regimes which also impose obligations and requirements on certain individuals who engage in lobbying activities.²

3 Broad application of Code (clauses 4 – 6)

- 3.1 Clause 4 of the Code states that it applies to “anyone trying to influence government policy, process or law”. This is a very broad clause which could see the Code applied, for example, to school children writing to their local MP, civil society groups, and arguably, to government officials themselves. It is unclear whether such broad application is

¹ More information about this committee can be found on the Law Society’s website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/public-law-committee/>.

² This includes, for example, lawyers who lobby decision-makers on behalf of their clients, and are already expected to meet the requirements and obligations in the Lawyers and Conveyancers Act 2006, and the regulations made under that Act.

intended and/or necessary to meet the objectives of the Code (i.e., to reduce corruption, to increase transparency, and to maintain public trust in the integrity of government).³

- 3.2 Similar issues arise from the proposed, and rather broad, definitions of “lobbyist” (any person or organisation that aims to influence government policy, process or law) and “lobbying activity” (any direct or indirect method used to influence government policy, process or law) in clauses 5 and 6.
- 3.3 We recommend the Ministry clarify whether the Code is intended to apply in this manner, and consider narrowing its application (for example, to those who provide lobbying services for a fee, or some other valuable consideration).

4 Conflicts of interest (clauses 8 and 14)

- 4.1 Clause 8 requires lobbyists to “[a]ct honestly and fairly when dealing with public officials” and to “treat personal relationships with best judgement” in order to promote fair and responsible access to public officials.
- 4.2 This clause should also explicitly recognise the potential for personal relationships to create actual or perceived conflicts of interest and acknowledge that those who are being lobbied may be subject to ethical and legal obligations which should be respected. A new clause to this effect could be modelled on the relevant sections of the Cabinet Manual.⁴
- 4.3 We acknowledge clause 14 requires lobbyists to manage and disclose conflicts of interest. Therefore, it may be appropriate to also insert a cross reference to clause 14 in clause 8 of the Code.

5 Requirement to comply with legal obligations

- 5.1 Clause 16.2 encourages lobbyists to “comply with relevant legal obligations and good practice expectations outlined in [the] code”. This wording could cause confusion about whether the Code imposes legal obligations on lobbyists. We recommend amending clause 16.2 to separate the references to legal obligations from the references to the good practice expectations outlined in the Code (perhaps by inserting a semi-colon in between the two phrases, or by splitting that clause into two separate clauses).
- 5.2 It is also unclear what legal obligations would be engaged in this context, as lobbying is not formally regulated in New Zealand. It may be that this clause is intended to refer to, for example, obligations arising from sections 102 – 105 of the Crimes Act 1961. In any case, we suggest clarifying which legal obligations are referenced in this clause, or deleting that phrase from the Code.

6 Accountability

- 6.1 Clause 17.1 encourages lobbyists to “establish a business culture that sets clear expectations about appropriate conduct and behaviour”. It would be appropriate to perhaps consider inserting a clause on how this culture is to be maintained. The clause currently reads as a *‘one and done’*, when culture is something which needs careful promotion to strengthen and maintain it.

³ Clause 2 of the Code.

⁴ Cabinet Office *Cabinet Manual 2023* at 2.65-2.68.

7 Next steps

- 7.1 We would be happy to answer any questions, or to discuss this feedback further. Please feel free to get in touch via the Law Society's Senior Law Reform & Advocacy Advisor, Nilu Ariyaratne (Nilu.Ariyaratne@lawsociety.org.nz).

Nāku noa, nā

A handwritten signature in blue ink, consisting of several overlapping loops and lines, positioned above the name and title.

Ataga'i Esera
Vice President