

Grease or Sand in the Wheels of Democracy? The market for lobbying in New Zealand

Abstract

What is the nature of the New Zealand market for political lobbying? Is lobbying grease in the wheels of a well-functioning democracy – adding to overall societal efficiency – as its supporters suggest? Or is lobbying sand, wasting resources in buying redistribution to the powerful and damaging the social fabric essential for a well-functioning democratic mixed economy, as opponents of lobbying believe? And, should we regulate lobbying in New Zealand, and why? This article concludes that the question is not whether lobbying should be made more transparent via regulation, but rather how this can best be achieved.

Keywords lobbying, vested interests, transparency, OECD, nature of lobbying, regulation, parliamentary access

What is the nature of the market for political lobbying in New Zealand? Is our lobbying grease in the wheels of a well-functioning democracy – adding to overall societal efficiency – as its supporters suggest? Or is lobbying sand in the wheels, by wasting resources in buying redistribution from one social group to another and damaging the social fabric essential for a well-functioning democratic mixed economy, as opponents of lobbying believe? And, should we regulate lobbying in New Zealand, and why?

Broadly, lobbying is any effort by individuals or collectives to directly influence decisions of legislators and public officials outside elections. So defined, lobbying is an important element of political participation outside the voting booth. This article focuses more narrowly

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on the local *market* for lobbying. Market lobbying occurs via the purchase of the services of a profit-making lobbying intermediary lobbying for a third party. Market lobbying also arises where a body, such as a corporation, a trade federation or peak business organisation, a trade union federation or a non-governmental organisation (NGO), hires a person and allocates their time to lobbying activity.

When analysing a market, the usual first port of call for developing an understanding is industry statistics. However, such data does not exist for lobbying. Statistics New Zealand industry data does not contain an exclusive industry category for political lobbying intermediaries; the industry is too small. Most intermediary lobbyists are probably included as management advice and related consulting services. The market is also too diffuse. For those corporates that directly lobby government, their lobbying activity will be included as measured output in their disparate industries. Additionally, data on NGO, trade union and business organisation lobbying activity is not available as such.

In many countries, the regulation of lobbyists provides considerable information with which to examine the lobbying market. While this has not resulted in a definitive overseas answer to the grease versus sand question, it provides information pertinent to addressing the issue to the public, and, via a more transparent system, automatically reduces the amount of sand in the system. By contrast, lobbying is unregulated in New Zealand. A Lobbying Disclosure Bill was introduced in Parliament in 2012 by the Green Party, but it was unsuccessful, with the general view being that it was an ill-considered and poorly crafted legislative response (Edwards, 2018b). The downstream consequence of an absence of regulation is an ongoing lack of public information on the local market.

However, various sources of information can be utilised to cast light on the local lobbying market, allowing a structured discussion of whether it provides grease for or is sand in the wheels of New Zealand democracy, if not anything approaching a definitive conclusion. There are a number of media articles on aspects of the lobbying industry (e.g. Dudding,

2011; Walters, 2017; Edwards, 2017, 2018a, 2018b; Barton Deakin, 2016; Secombe, 2015). There are commentaries by politicians (e.g. Mallard, 2003). There are several pieces of postgraduate student or academic research (Williams, 2014; Tyler, 2015; Strong and Tyler, 2017), as well as a useful broader consideration of vested interests, including lobbying, by Ellie Argyle and political commentator Colin James (Argyle and James, 2014). There are several investigative works alleging egregious behaviour by lobbyists (Hager and Burton, 1999; Hager, 2002, 2012). There is one policy article by a professional lobbyist (Unsworth, 2014). Information on some lobbyists is available from a list of access cards to Parliament issued by the speaker of the House. There is online

lobbying. The first theory is that vested interests directly lobby policymakers with money to generate political change which rewards their bottom lines (Olson, 1965; Tollison, 2014). Such 'rent seeking' lobbying is entirely social sand: it wastes society's resources. A second theory suggests that vested interests lobby policymakers with a mix of private information and money (De Figueiredo and Richter, 2014). Money either signals the credibility of their information or buys access to policymakers. This form of lobbying may be a mixture of grease and sand, if the private information is of social value. A third theory suggests that vested interests with similar objectives to policymakers support policymakers to allow them to fulfil more of their shared objectives (Groll and McKinley, 2015).

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information provided by lobbying companies to promote themselves to potential clients. Finally, there is a body of theory and empirical evidence on lobbying markets from overseas. It is to this international literature to which we first turn.

International literature on lobbying

There is a vast international literature on lobbying from a wide variety of disciplinary perspectives. The surface of this literature can be scratched here only, and our focus is on the economic literature, which is based on a rational choice paradigm which, while delivering insights (e.g. Grossman and Helpman, 2001), may not be the most appropriate lens through which to consider lobbying. As overseas information comes from different political and economic environments, their conclusions must be applied with care to New Zealand. Yet that information is far from irrelevant.

There are several core theories in the international literature on the market for

Again, this form of lobbying may be a mix of grease and sand.

While the empirical work arising out of the rational choice paradigm has been unable to determine the extent to which lobbying generates social value, or has chosen not to address these questions (Grossman and Helpman, 2001, p.4), it has established a number of important empirical regularities about lobbying. While many of these stylised facts are unsurprising, it is valuable to have them confirmed by systematic study. These empirical regularities, for the United States, are as follows (all from De Figueiredo and Richter, 2014). First, lobbying spending is significantly more sizeable – five times larger – than private funding of political parties. Second, businesses account for the vast majority – 84-86% – of lobbying spending. In contrast, issue-ideology groups, such as environmental groups, comprise a small share: between 2% and 7% of spending. Corporate lobbying is not cancelled out by the countervailing power

Figure 1: Number and distribution of lobbyists and non-lobbyists with swipe card access to Parliament, 2012 - 2017

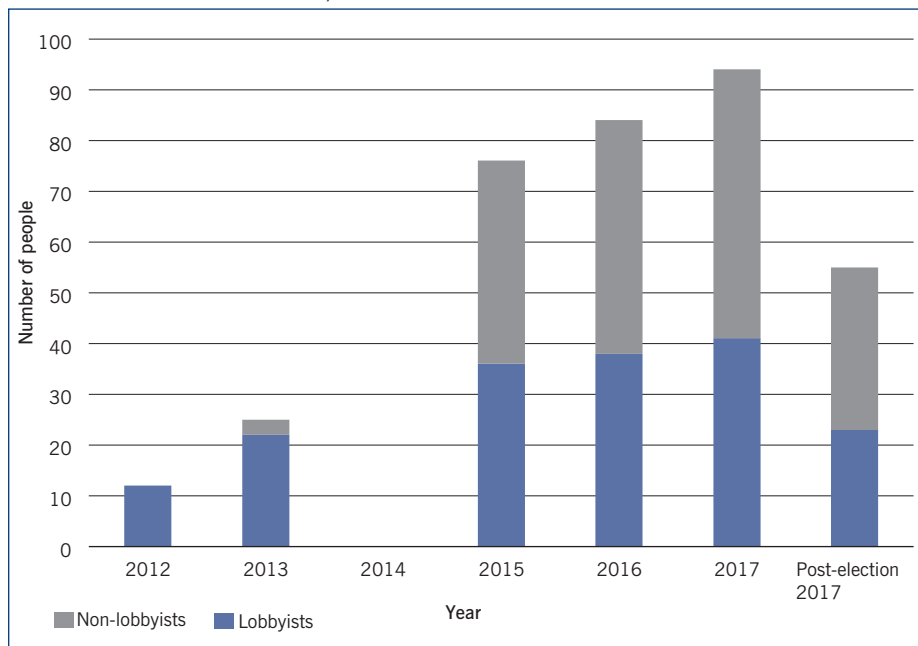


Table 1: Market shares of lobbying

	New Zealand (estimated guess)	European Union
Corporates	26%	13%
Business Associations and Unions	20%	10%
Consultants (intermediaries)	18%	15%
NGOs	18%	13%
Local government	7%	N/A
Iwi	5%	N/A
Government funded advocacy	5%	N/A
Trade Federations	N/A	35%
Regional representation	N/A	8%
International Organisations	N/A	5%
Think Tanks	N/A	1%

Source: Unsworth, 2014

of issue–ideology groups. Third, large corporations are more likely to lobby independently than smaller corporations, and they tend to continue lobbying over time. Fourth, lobbying increases when there is a larger financial stake for the organised interest. A fifth fact is that lobbyists target two sorts of politicians: the powerful agenda setters, and those wavering at the margins who can most easily be swayed.

Empirical researchers have had limited success in identifying whether lobbyists are successful because of *what* they know – their knowledge base – or *who* they know – their connections. The evidence suggests both factors are operating (De Figueiredo and Richter, 2014). Lastly, a large body of empirical research shows that lobbying

generally generates positive returns to the lobbyist (Borisov, Goldman and Gupta, 2015; Hadani, Bonardi and Dahan, 2017).

Lobbyists and parliamentary access

Who has swipe card access to Parliament, other than staff and MPs, also allows some insights into lobbying, providing some, albeit imperfect, information on some market participants and their sectoral distribution. Here we consider this data and the qualitative implications of its limitations. The numbers with card access are small and those who appear to be lobbyists is smaller. However, the number of lobbyists grew rapidly from 12 in 2012, to 41 people in July 2017 (see Figure 1). Whether this represented industry growth, or simply higher rates

of acquisition of cards, is unclear. In 2003 MP Trevor Mallard claimed that ‘[i]n the many years I have spent in Parliament, I have noticed a growth in lobbying. This growth is likely to continue. Lobbying as a practice and a discipline is going to get more sophisticated and more common’, and he repeated this view in 2015 (Tyler, 2015, p.18). In 2015 another long-serving MP, Peter Dunne, reported that lobbying activity had shrunk, but agreed with Mallard that it had become more sophisticated in its methods (ibid., p.19). After the 2017 election, the new speaker of the House reduced numbers with card access. Lobbyists currently make up fewer than half of those with cards; 22 of those with cards appear to act as lobbyists. In terms of the organisations they represent, their current number and distribution are as follows:

- seven holders (32%) represent corporations;
- seven (32%) are intermediary lobbyists;
- two (9%) represent industry bodies (businesses);
- five (23%) represent trade unions – either the NZCTU or the PSA;
- one (5%) is an incorporated society (the New Zealand Taxpayers’ Union).

By way of comparison with the card data, Table 1 shows lobbyist Mark Unsworth’s impressionistic estimates of market share of lobbying by sector, next to his European Union figures. In terms of the broad dominance by corporations and their proxies, the access card data looks similar to Table 1, and the local dominance of market lobbying by business interests is also similar to the international empirical facts considered above. However, Unsworth’s data suggests a stronger representation of NGO lobbying in New Zealand compared to overseas.

A key characteristic common to all corporations with cards is their size, again consistent with the international literature. Large companies whose bottom line can be significantly influenced by central government regulations and policies have a strong incentive to lobby. If they do a considerable amount, it is rational to employ a person who specialises in this task, rather than purchasing lobbying services from an intermediary (although

corporations may also do this). Corporations with an employee with an access card currently include Air New Zealand, Fonterra, Chorus and Westpac. These people have roles as directors or managers of 'external relations', 'communications' or 'public affairs'; many of them have previous political experience in different guises.¹

Specialist lobbying firms – intermediaries – also appear to be an important part of the market. These firms provide lobbying services for multiple clients. Who these clients are is unclear, and it is unknown how much the firms are paid and to what extent clientele engage in one-off transactions or repeat business. However, clients are almost certainly disproportionately weighted towards the business sector. Well-known firms such as Saunders Unsworth, Busby Ramshaw Grice Ltd and Boag Allen SvG all have employees with cards. Many of these specialist lobbyists also have extensive experience within the political system.

The organisations representing industries with representatives on the list are peak organisations whose activity is affected regularly by regulations and legislation. A significant number of trade unionists are also on the list. It is unclear whether union representatives on the list are full-time lobbyists.

The card list suggests that a relatively small lobbying market exists in New Zealand. Indeed, the established wisdom is that the market is both relatively small and unimportant (see, for example, Walters, 2017). In order to contextualise this conjecture, the per capita number of lobbyists in the United States and Australia is of relevance. In 2016 the United States had 11,143 active lobbyists for a population of 323 million.² If New Zealand had a similar per capita proportion, there would be about 164 local lobbyists. Australia has 554 registered lobbyists currently and a population of about 24 million.³ Having an Australian per capita figure here would mean about 108 lobbyists.

The card data suggests that the New Zealand lobbying market is roughly 13% the size of the United States' and 20% the size of Australia's. However, the access card list, while giving an approximation of the distribution of institutions engaging in

lobbying, has several important deficiencies as a data source for the number of lobbyists employed. What does it miss? First, not all professional employees of a lobbying company have swipe card access. For example, according to their website Saunders Unsworth has five professional staff, but only two have cards. A further major deficiency is that it does not include some firms known to be part of the lobbying market. Lobbying firms that do not have staff currently on the list but have had previously include Silvereye Communications (employing eight people), Dart Government Relations (two people) and Acumen Republic (12). Taking into account firms previously with card access and still operating increases the market by around ten firms and by a much larger number of lobbyists.

All lobbying firms that have previously had card access to Parliament consist of small teams of between one and a dozen or so employees, with one or two support staff and the bulk of staff being professionals.

The true size of the market is even larger. There are many lobbying firms and communications agencies which have never had access cards. An internet search for 'government relations firms nz' shows many such firms, including Exceltium, Boyd Public Relations and Adroite. And there are a number of recent new entrants to the market, including Barton Deakin and Hawker Britton.

Other significant sectors of the lobbying market are not represented. Many major law firms provide lobbying services (such as Buddle Findlay, Simpson Grierson and Johnston Lawrence). Chen Palmer, a leading specialist public law firm, has never had card access to Parliament but provides clients with services which most likely include lobbying (Chen Palmer, 2018).

Another sector absent from the list is NGOs. These organisations are often a significant lobbying presence during the

legislative process. One explanation for this absence is that NGOs gain political influence through methods other than parliamentary meetings. How relatively important NGOs are is unclear, and it may be that Unsworth has overestimated the extent of NGO lobbying.

The card list is also not fully representative of the market because MPs can be lobbied outside Parliament. Lobbyists can use their contacts to instigate meetings or conversations with politicians without needing to regularly enter Parliament. Paid people can lobby government through phone calls, email, letters, and oral or written submissions. Thus, the number of paid lobbyists is likely to be by an order of magnitude larger than the parliamentary access card data suggests. Overall, the New Zealand lobbying market

may more closely resemble that of Australia, for example, than New Zealanders probably like to believe.

Additionally, the trend suggested by the size of the list of people with cards creates the impression that local lobbying has been through a boom–bust cycle. However, this perception is probably inaccurate. It is difficult to effectively gauge growth in the lobbying industry, but it is unlikely to be decreasing in size (as discussed above). Indeed, an experienced observer suggests that it is growing (Edwards, 2017, 2018b), a view supported by evidence of recent new entrants to the industry.

How do specialist lobbyists operate?

Based on their websites, firms offering lobbying services appear to be fairly uniform in how their services are structured and presented to customers. All lobbying firms that have previously had card access

to Parliament consist of small teams of between one and a dozen or so employees, with one or two support staff and the bulk of staff being professionals. As already noted, many lobbyists have previous work experience within government (Tyler, 2015, pp.13–14). The Frank Bold Foundation suggests that ‘the single most valuable tool any lobbyist has is their contacts with and links to politicians and decision-makers’ (Kwiatkowski, 2016). This experience is a selling point across all lobbying firms. Evidently, these ex-government employees maintain their contacts inside government once they leave, and cultivate their relationships to deliver policy results for clients. For some, this maintenance is aided by refreshing of their connections

labour is limited by the extent of the market’ seriously, the recent market entry of partisan lobby firms Barton Deakin and Hawker Britton may be a further indication of the growth of the local lobbying industry, as it is now large enough to sustain left–right specialisation. Although their entrance into the market may signal a swing towards a partisan lobbying model more closely resembling the American or Australian markets, only time will tell if it is successful.

Current charge-out rates for lobbyists are unclear, but casual charge-out rates were reported as being in the vicinity of \$400 per hour or \$3200 per day in 2011, which suggests that comparatively high levels of remuneration are common

translation is so important, do public servants, on the other side of the divide, not hire such translators for all citizens, rather than only those who can afford them?

Due to the lack of regulation, it is difficult to know both who lobbyists act for, and whether lobbyists behave ethically. Investigative journalist Nicky Hager has shed light on the inner workings of government by detailing cases where lobbyists, public officials and organisations have worked together to coordinate misleading public relations campaigns: this is pure sand (see also Tyler, 2015, p.17). Hence, the claim that lobbyists always act in the public interest is demonstrably incorrect. The issue is how much of such behaviour occurs relative to socially useful ‘translation’ services, and how damaging the former is relative to the latter.

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Should New Zealand regulate lobbying?

The OECD has advocated developing non-reactive and coherent regulatory approaches to lobbying in order to maintain and enhance public trust in the democratic process (OECD, 2009). The above discussion has examined the limited information on local lobbying. Acknowledging its limitations, it does not support the notion that the lobbying market in New Zealand is *sui generis*. Given what we know about local lobbying, is there then any strong reason why New Zealand should not follow OECD recommendations and implement well-considered, transparency-enhancing reforms?

Market-based lobbying is an area of human engagement where two opposing values come into contact and thus into conflict. The first value is that of the market, where one dollar equals one vote, and where dollars are unequally distributed across the population, local and international. The second is that of democratic citizenship, where, ideally, one adult citizen of a nation state has one vote and votes are equally distributed across the voting population (or, more broadly, hours available for non-market lobbying activities are roughly equally distributed across citizens).

There are further contextual factors in this conflict that are important. There has

via revolving door appointments, from lobby organisations to political staff and back (Edwards, 2018a). Some lobbyists make their way in from the other direction: current National Party MP Chris Bishop and former National Party MP Todd Barclay were both lobbyists before entering Parliament (Emanuel, 2018).

Another notable characteristic of the market is that not all firms solely offer lobbying services. Many firms also offer public relations, public law, strategic communications or crisis management as services. Indeed, perhaps to avoid the public stigma of ‘lobbying’, firms tend to avoid describing their work as such. Instead they tactfully choose to describe their work using terms such as ‘government relations’, ‘influencing policy’ or ‘advocacy’.

Most firms operate across the political spectrum. However, if one takes Adam Smith’s famous dictum ‘the division of

(Dudding, 2011). Pay rates, billable hours, overheads and hence profitability are unclear.

What lobbyists actually do on a day-to-day basis to earn their coin and who they do it for is not transparent (see Tyler, 2015, pp.33–4 for a discussion of the possible range of activities which may be part of lobbying). Indications are that most clientele are businesses (Dudding, 2011). Mai Chen, a public lawyer who prefers not to identify as a lobbyist, says that lobbyists offer translation services between two groups, public policymakers and businesses, which speak different languages (Dudding, 2011; see also Emanuel, 2018). From this perspective, a large proportion of the work lobbyists do is grease, improving information provided to public officials. The translator metaphor raises a question of justice: who can and can’t afford to pay for ‘translation services’? And why, if

been a worldwide rise in wealth inequality and shift in the functional distribution of income towards corporate profits in recent times (Piketty, 2015). This shift has also been taking place locally (Rosenberg, 2018). At the same time, an increasingly authoritarian and kleptocratic China is flexing its growing economic muscle in sophisticated efforts to influence domestic political processes, including in New Zealand (Brady, 2017).⁴ Hence, lobbying activities – by increasingly wealthy individuals, by increasingly profitable local and multinational corporate entities and by increasingly anti-democratic nation states – are coming into growing conflict with notions of democratic citizenship. At the same time, with union membership in New Zealand declining from 42.9% of the workforce in 1991 to 17.7% in 2016, organised labour’s countervailing lobbying power has been significantly eroded relative to the corporate sector (Ryall and Blumenfeld, 2017). These shifts in power have intensified, and likely will continue to exacerbate the ongoing conflict between market values and democratic citizenship.

There are good reasons to believe that lobbying may directly throw sand into the wheels of society, as well as indirectly undermining values underpinning democratic citizenship, and these problems are going to be larger in the absence of transparency. There are also reasons for believing that these problems are likely to become worse over time. Hence, action on these matters today is likely to be easier than action tomorrow, as growing vested interests will make stronger efforts to hide lobbying activities that are privately beneficial but socially damaging.

Low compliance cost approaches which provide the raw material for a better informed democratic citizenship and do not impose high costs on legitimate lobbying are likely to be the most appropriate policy responses. The OECD has recommended significant change in this area, change which occurs in a considered manner, unprompted by the heat of major scandal (OECD, 2009). Recent Green Party commitments to publish details of ministerial diaries and receipt of perks are to be applauded (Cook, 2018). There is no reason why such public disclosures should not be enforced by law

for all elected members of Parliament, as representatives of the people. Extension of this form of transparency to elected local government officials is also desirable.

In addition, it is time to again consider a register of lobbyists and their clients, adoption of a formal code of conduct along the lines of that in Australia, and regular collection and publication of data on who spends what on market lobbying. Again, this form of policy response is a relatively low compliance cost measure which makes the process more transparent, and thus more consistent with principles of democratic citizenship.

The publication of ministerial diaries, and the creation of a register of lobbyists and their clients and publication of the value of their spending would provide the

he has rejected clients in the past on ethical grounds (Emanuel, 2018). Barton Deakin’s website includes an ‘Ethics’ page, which states that the firm ‘acts in the broader public interest in all its dealings with clients and governments’ (Barton Deakin, 2017). Ethics statements are uncommon on other lobbyist websites. The insistence by lobbyists that they act ethically and that their industry is effectively self-regulating can be seen, not mutually exclusively, as honest, unbiased observation, self-interested business protection or cognitive dissonance about what they are doing. The lack of industry transparency means that separating the signal from the noise in these claims is impossible.

However, the creation of low compliance cost regulation, with a strong

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public with a body of pertinent information to enable them to better understand the decisions made by their elected representatives. Transparency will help citizens to better judge for themselves whether lobbying is socially valuable grease or anti-social sand in the democratic wheels.

Some level of regulation of the lobbying industry would also discourage unethical behaviour. Given New Zealand’s high levels of transparency and relative lack of corruption (Transparency International, 2016), some might question whether even light-handed regulation of the lobbying market is necessary. One view is that regulation is unnecessary, because lobbyists are self-regulating and ethical (Dudding, 2011; Emanuel, 2018). Neale Jones, lobbyist for Hawker Britton, believes that because Wellington is a ‘small town’, lobbyists can’t get away with what he calls a ‘breach of faith’. Barry Saunders of Saunders Unsworth agrees, again seeing the small industry as self-policing. Jones insists that

transparency focus, would likely not be strongly objected to by those within the industry. In the report of the government administration select committee regarding the 2012 Lobbying Disclosure Bill, it was noted that most of the 103 submissions received ‘supported [the bill’s] intent of enhancing trust in the integrity and impartiality of democracy and political decision-making by bringing more transparency to political lobbying’ (Government Administration Committee, 2013). Furthermore, lobbyists Jenna Raeburn and Neale Jones are not opposed to a register similar to those in Australia and Canada, since their firms’ Australian operations have not been negatively affected by the mandatory register of lobbyists and their clients (Emanuel, 2018).

Lobbying may be grease in the wheel of politics, or it may be sand, or – perhaps inevitably – it may be a complex mixture of both. Although this study has produced some idea of the nature of the lobbying market, it is still unclear who lobbyists

work for and how they act, with little hard evidence available to illuminate the true nature of the industry. The key point uncovered is that citizens lack convincing evidence for sand or grease. This is why regulation is needed – to shine a brighter light on a currently shadowy industry which has significant long-term potential to corrode the integrity of the democratic

process. The aim of regulation would also be to contribute positively to making the industry more about grease and less about sand. With multiple stakeholders, as well as the OECD, in agreement that well-designed regulation is necessary, the question must surely be: why not?

1 Information was obtained by viewing the LinkedIn pages of lobbyists who have been, or currently are, on the swipe card

access list. Pages accessed 15 February 2018.
 2 From <https://www.statista.com/statistics/257340/number-of-lobbyists-in-the-us/>, downloaded 20 March 2018.
 3 From http://lobbyists.pmc.gov.au/who_register_lobbyists.cfm, downloaded 20 March 2018.
 4 In this context, note that Saunders Unsworth advertise their services in a Chinese language section: see <http://www.sul.co.nz/page/chinese-section.aspx>. Whether they have clientele from China, as opposed to Chinese New Zealanders, and if so who they are and what they may be lobbying about is unknown. Silvereye also appear to have an advertised presence directed at China: see <http://www.silvereye.co.nz/about-us/> (accessed 20 March 2018).

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2019 International Research Society for Public Management (IRSPM) Annual Conference

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Victoria University of Wellington, New Zealand, 16 – 18 April 2019

Call for Panels

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