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# Local Government (Pecuniary Interests Register) Amendment Bill 2021

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*22/11/2021*

## **Submission on the Local Government (Pecuniary Interests Register) Amendment Bill**

### **1 Introduction**

- 1.1 The New Zealand Law Society | Te Kāhui Ture o Aoteroa (**Law Society**) welcomes the opportunity to comment on the Local Government (Pecuniary Interests Register) Amendment Bill (**Bill**).
- 1.2 The purpose of the Bill is to “improve transparency and strengthen public trust and confidence in decision-making of local authorities”.<sup>1</sup>
- 1.3 This submission has been prepared with input from the Law Society’s Public and Administrative Law Committee.<sup>2</sup> The submission seeks to highlight some issues and anomalies in the Bill and make recommendations to ensure the Bill achieves its stated purpose.
- 1.4 The Law Society does not wish to be heard.

### **2 Proposed disclosure requirements**

- 2.1 The Bill aims to “better align transparency requirements of members of local authorities with members of Parliament and the Executive Council”.<sup>3</sup>
- 2.2 This suggests it mirrors the pecuniary interest disclosure requirements of members of Parliament (which are set out in Appendix B of the Standing Orders of the House of Representatives). However, the Bill in fact creates a considerably more pared down regime, both in terms of the information that needs to be declared, and the procedures available to scrutinise members’ returns.
- 2.3 The Bill could be amended to ensure the proposed local government regime is more aligned with the transparency requirements set out in the Standing Orders, for example, by providing that:
- (a) Proposed new s 42C(1)(b) should exclude investment interests under a “managed investment scheme”, as defined in section 9 of the Financial Markets Conduct Act 2013.<sup>4</sup>
  - (b) Proposed new section 42C(1)(g) should require members of local government to disclose any property owned by a trust of which the member is a beneficiary.<sup>5</sup>
  - (c) Proposed new section 42D(1)(b) should include situations where the member receives multiple gifts from the same donor in a single return period, which have a total value of more than \$500.<sup>6</sup>

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<sup>1</sup> Local Government (Pecuniary Interests Register) Amendment Bill, Explanatory Note.

<sup>2</sup> The Law Society’s Public and Administrative Law Committee monitors law reform proposals and provides advice on issues relating to public and administrative law reform (more information is available on our website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/public-and-administrative-law-committee/>).

<sup>3</sup> Above n 1.

<sup>4</sup> This is a requirement under Appendix B of the Standing Orders, paragraph 5(1)(b).

<sup>5</sup> As required under Appendix B of the Standing Orders, paragraph 5(1)(g).

<sup>6</sup> As required under Appendix B of the Standing Orders, paragraph 8(1)(b)(ii).

- (d) Proposed new section 42D(1)(b) should exclude gifts from family members, for the reasons set out in the advice prepared by the Ministry of Justice.<sup>7</sup> However, as noted in that advice, this may be a simple drafting error, and the disclosure of large gifts to family may be justifiable on transparency grounds.<sup>8</sup>

### **3 The register**

- 3.1 Proposed new section 42A(1) requires the local authority to maintain a register for members of the local authority to disclose their pecuniary and other specified interests. The register must comprise the returns and information required to be disclosed (proposed new section 42A(2)) and the local authority must appoint a Registrar to compile and maintain the register (proposed new section 42E(1)). The effect of these provisions is that the returns and information would become the register which is publicly available.
- 3.2 The Bill does not, however, contain any administrative provisions which relate to compiling the register or requiring a certain form of returns. With each local authority left to develop their own register, this may lead to a lack of consistency and clarity. The Bill could therefore be improved by requiring a standard and publicly notified format for the returns so these are consistent across all local authorities.
- 3.3 Further, a requirement to simply publish returns and information, which then leaves the reader to analyse this material, may not be the most transparent or accessible way of communicating this information. This process differs from the process for the Register of interests of members of Parliament, where the returns and information provided to the Registrar are turned into a booklet which must be published.<sup>9</sup> The returns themselves remain confidential and are destroyed after three complete terms after a person ceases to be a member of Parliament.<sup>10</sup>
- 3.4 Any requirement to publish returns and information which contain personal information also raises privacy issues involving local authority members and their families (who are not themselves elected representatives or public officials). These issues must be balanced with the need for improved transparency around decision-making of local authorities, and we invite the select committee to consider these issues further if the Bill is to proceed.
- 3.5 We also note clause 7 of the Bill seeks to make consequential amendments to the Privacy Act 1993. This Act has been repealed and replaced by the Privacy Act 2020 (**2020 Act**), which does not contain any public register provisions. The advice prepared by the Ministry of Justice in relation to this Bill also notes the reference to the repealed Act, and we agree with the Ministry's recommendation that the drafting of the Bill would need to be amended to refer to the 2020 Act.<sup>11</sup>

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<sup>7</sup> Ministry of Justice *Consistency with the New Zealand Bill of Rights Act 1990: Local Government (Pecuniary Interests Register) Amendment Bill* (3 August 2021).

<sup>8</sup> Above n 7, paragraphs 17 – 19.

<sup>9</sup> Standing Orders, Appendix B, paragraph 18.

<sup>10</sup> Above n 9, paragraph 21(2).

<sup>11</sup> Above n 7, paragraph 7.

#### **4 The role of the Registrar and Auditor-General**

##### *Appointment of Registrar*

- 4.1 Proposed new section 42E provides that local authorities must appoint a Registrar to compile the register and provide guidance to members of the local authority. Subsection (2) provides that the chief executive of a local authority may be the Registrar.
- 4.2 The corresponding regime for members of Parliament provides that the Deputy Clerk is nominally the Registrar,<sup>12</sup> but the practice has been to make an external appointment to the role (with the Deputy Clerk filling the role only in the absence or between appointments of the Registrar). This raises a wider policy question on whether this Bill should provide for there to be a single external Registrar who can provide consistency in requirements and transparency across all local authorities.

##### *Powers and functions of the Registrar*

- 4.3 Under clause 6 of the Bill, it is an offence for a member of a local authority not to submit a pecuniary interest return. However, it is unclear what would happen if concerns were raised about the contents or accuracy of a return. There are no powers for the Registrar to inquire into complaints or concerns raised and it does not seem possible for members to amend or update their returns if they become aware of omissions or errors.
- 4.4 The Bill could therefore be strengthened if there was an ability for the Registrar to inquire into matters related to the register.<sup>13</sup> The ability for members to be able to correct errors or omissions, at the discretion of the Registrar, should also be considered.

##### *Role of the Auditor-General*

- 4.5 Under the corresponding regime for members of Parliament, the Registrar is required to provide copies of every return to the Auditor-General, and the Auditor-General is required to review the returns and advise the Registrar of any matters arising from the review.<sup>14</sup> However, the Auditor-General does not have a similar express role in the proposed local government regime. This appears to leave matters of compliance and ultimate sanctions with the Police, which may not always be appropriate for dealing with complaints about accuracy of returns or inadvertent errors or omissions.
- 4.6 We therefore encourage the select committee to examine the role of the Auditor-General in the proposed local government regime as that may be appropriate to support the work of the Registrar.

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<sup>12</sup> Above n 9, paragraph 2.

<sup>13</sup> The role of the Registrar of Pecuniary and Other Specified Interests of Members of Parliament was expanded in 2010 to include dealing with concerns raised by members about compliance of other members with their obligations under the Standing Orders. The Registrar was given an inquiry function in order to do this (See *Report of the Standing Orders Committee: Review of Standing Orders relating to pecuniary interests* (December 2010)).

<sup>14</sup> Above n 9, paragraph 15.

## 5 Legislative design

- 5.1 The matters covered by this Bill can be seen to be part of a wider, disparate regime to provide for improved transparency and accountability of local authority members and to manage possible conflicts of interest.
- 5.2 This wider regime includes the Local Authorities (Members' Interests) Act 1968 which provides certain rules to ensure members of local authorities cannot take advantage of their official positions for private financial gain. That Act has been described by the Auditor-General as being “somewhat out of date and difficult to understand” and the rules not being easy to apply in a modern local government context.<sup>15</sup> As a result, the Auditor-General has developed plain-English guidance to assist members with complying with the requirements set out in that Act.<sup>16</sup>
- 5.3 The legislative design of an accountability and transparency regime such as the proposed regime could be improved if the overall legislative framework is well-designed and aligned with other relevant legislation including the Local Authorities (Members' Interests) Act 1968, the Local Government Official Information and Meetings Act 1987 and the Local Government Act 2002.



Frazer Barton

**Vice-President**

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<sup>15</sup> Controller and Auditor-General *Local Authorities (Members' Interests) Act 1968: A guide for members of local authorities on managing financial conflicts of interest* (June 2020) at page 3.

<sup>16</sup> Above n 15.