

Privacy Commissioner's submission to the Governance and Administration Committee on the Local Government (Pecuniary Interests Register) Amendment Bill (51-1)

Executive Summary

1. I am pleased to provide a submission on the Local Government (Pecuniary Interests Register) Amendment Bill (the Bill).
2. The Privacy Act 2020 is New Zealand's main privacy statute. One of the Privacy Commissioner's functions under the Privacy Act is to examine proposed legislation that may affect the privacy of individuals.
3. I support the Bill's focus on transparency of local authority members' pecuniary interests but believe it could better provide for members' privacy. I encourage the Committee to:
 - specify a purpose for the register of pecuniary interests and ensure that members must provide no more information than necessary for that purpose
 - provide more detail about the manner in which information from the register is to be made publicly available
 - deal more clearly with matters relating to members' families
 - remove a redundant reference to the Privacy Act 1993 from the Bill and ensure that the Bill itself provides any appropriate privacy protections.

What the Bill does

4. Currently, there is no legislative requirement for all pecuniary interests of members of local authorities to be declared, and no consistent practice across local government. The Local Authorities (Members' Interests) Act 1968 requires only that members do not vote on or take part in the discussion of matters in which they have a pecuniary interest.
5. The Bill would amend the Local Government Act 2002 (the Act) to require local authorities to maintain a register of pecuniary and other stated interests of local authority members. It also provides that local authorities must make such registers 'publicly available' (cl 4, inserting new s 42A of the Act).
6. A local authority member would be required to make a pecuniary interest return containing specified information for a 12-month period (cl 4, inserting new s 42B). The specified information about members' interests includes information about pecuniary interests in companies, employment, beneficial interests in trusts, and interests in real property (cl 4, inserting new s 42C). Members must also declare travel undertaken (unless fully funded by the member or the member's family), and gifts or payments received (cl 4, inserting new s 42D). Failure to comply with the requirement to declare pecuniary interests would be an offence under the Act (cl 6).

Comment on the Bill

Is the disclosure of personal information required by the Bill justified?

7. The General Policy Statement states that the Bill's purpose is to improve transparency and strengthen public trust and confidence in the decision-making of local authorities.

The Bill is intended to better align transparency requirements for local authority members with those for members of Parliament and Ministers.

8. Information about the pecuniary interests of local authority members is personal information about those members. Requirements for members to disclose these interests and for that information to be made publicly available therefore have implications for members' privacy.
9. I accept that there is a public interest in transparency about pecuniary interests that could influence, or be perceived to influence, members' decision-making. Local authority members also have access to information that is not available to the wider public, and transparency about pecuniary interests helps to ensure that members do not make improper use of such information for their personal gain.
10. However, the public interest in transparency and probity needs to be balanced not only with the privacy interests of members, but also with the public interest in encouraging a broad range of people to put themselves forward for election to local authorities. Beyond a certain point, requirements for transparency of members' interests may act as a disincentive to participation for some people.
11. In assessing whether the Bill's requirements strike the right balance, I encourage the Committee to ensure that the disclosure requirements of the Bill:
 - are consistent with other New Zealand requirements for the disclosure of pecuniary interests, while taking account of the specific local government context
 - involve the disclosure of no more information than is reasonably necessary to ensure that local authority members do not stand to benefit financially from decisions in which they are involved and to promote public trust in the integrity of local authority decision-making.
12. I recommend that the Bill be amended to create a statutory purpose for the register, and to provide that information from the register may be used or disclosed only for that purpose.¹ A statutory purpose would assist with deciding what information the Bill should require members to declare and would also assist members in their decisions about how to comply with those requirements. A statutory purpose for the register would be consistent with the Privacy Act's emphasis on agencies being clear about the purpose for which they collect personal information.

Requirement to make pecuniary interests register publicly available

13. The Bill does not include specific provisions about publication of information from a local authority's register of pecuniary interests. Instead, it requires that the register be made 'publicly available'. A requirement to make a document or other information 'publicly available' is defined in section 5(3) of the Act, which provides that the local authority must take reasonable steps to:
 - ensure the document or information is accessible to the public in a manner appropriate to its purpose, including on an internet site where practicable
 - publicise the fact that the document or information is available and how it may be accessed.

¹ See Standing Orders of the House of Representatives, 2020, Appendix B, cl 1(3)-(4).

14. I recommend that the Bill be amended to provide more detail about the manner in which information from the register is to be made available. I propose that the Bill should, like the Standing Orders about MPs' pecuniary interests, distinguish between the register itself and the information from the register that is made public.
15. Standing Orders require the publication of 'a summary containing a fair and accurate description of the information contained in' MPs' pecuniary interests returns. This summary is to be both published on a website and available for inspection in person.² By contrast, the actual returns of MPs are confidential and must be destroyed after a specified period of time.³
16. Better aligning publication requirements for local authority members' pecuniary interests with those for MPs could limit the extent to which the Bill intrudes on the privacy of local authority members. A requirement to make available an accurate summary of the contents of the register, rather than the register itself, could allow some specific personal details to be withheld from publication while still meeting the public interest in transparency. Access to the actual returns could be requested under the Local Government Official Information and Meetings Act 1987, but such requests would be subject to the power to withhold information for the reasons specified in that Act.⁴
17. The committee should also consider whether the Bill should expressly provide for information on the register not to be disclosed publicly in some circumstances. In particular, there may be a case for allowing information not to be published, in rare circumstances, to protect the safety of members or where there is a significant likelihood a member could be subject to serious harassment.
18. I note that new section 42C(1)(g) would require the declaration of the location of real property in which a member has a legal interest. This could include the location of the member's place of residence. I assume the intention is to provide the general location of the property, not the specific address, although the Bill should make this clear. I recognise that, in many communities, it will be well known where a member lives. However, there could be rare cases in which there are legitimate reasons for keeping private not only the specific address but also the general location of a member's home.
19. In addition, I recommend that the Bill provide that all information in the actual returns for a former member be destroyed after a specified period of time, unless there is a good policy reason why such returns should be retained indefinitely. Such a requirement would be consistent with information privacy principle 9 of the Privacy Act, which requires that an agency must not retain personal information for longer than necessary.

Family members

20. The Bill deals only with the pecuniary interests of members themselves, and not those of their families. However, to protect the privacy interests of family members, it could be helpful for the Bill to expressly address the question of family members' interests, as the requirements for members of Parliament do.⁵

² Standing Orders of the House of Representatives, 2020, Appendix B, cl 18.

³ Standing Orders of the House of Representatives, 2020, Appendix B, cl 21.

⁴ The fact that, under Standing Orders, MPs' actual returns are to be kept confidential must be seen in the context of MPs not being subject to the Official Information Act 1982.

⁵ Standing Orders of the House of Representatives, Appendix B, cl 6(1): 'A member is not required to disclose any interest involving a family member unless, guided by the register's purpose (in clause 1(3)), they consider the interest should be disclosed.'

21. The Bill provides that travel does not need to be declared if it has been fully paid for by the member or by a member of the member's family. This is appropriate, as there is no public interest in information about travel funded by members and their families. However, unlike the requirements for the register of MPs' interests, the Bill does not provide an equivalent exception in relation to gifts from family members. In addition, the Bill does not define who constitutes a member of the member's family.

Reference to the Privacy Act

22. Clause 7 of the Bill would amend schedule 2 of the Privacy Act 1993 to recognise a register of pecuniary interests as a public register.
23. As the Committee will be aware, the Privacy Act 1993 has been repealed and replaced by the Privacy Act 2020. The current Privacy Act does not include the public register provisions that were in Part 7 and Schedule 2 of the Privacy Act 1993. Appropriate privacy protections should instead be included in legislation establishing public registers.
24. Clause 7 should therefore be deleted. The Committee should instead consider my comments above about the purpose of the register and the manner in which information from the register should be made publicly available.

Conclusion

25. I **recommend** that the Committee amend the Bill to:
- provide for a statutory purpose for the register of pecuniary interests, and that information from the register may be used or disclosed only for that purpose
 - provide more detail about the manner in which information from the register is to be made publicly available, including whether the Bill should provide for information on the register not to be disclosed in some cases
 - provide that all information in the actual returns for a former local authority member must be destroyed after a specified period of time
 - expressly address the pecuniary interests of members' families
 - delete clause 7, which relates to redundant provisions of the Privacy Act 1993.
26. I trust my comments are of use to the Committee. I do not seek to be heard on my submission but am happy to appear before the Committee if that would be of assistance.



John Edwards
Privacy Commissioner

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