

3 August 2021

Hon David Parker, Attorney-General

## **Consistency with the New Zealand Bill of Rights Act 1990: Local Government (Pecuniary Interests Register) Amendment Bill**

### **Purpose**

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1. We have considered whether the Local Government (Pecuniary Interests Register) Amendment Bill (the Bill), a member's Bill in the name of Tangi Utikere MP, is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 14 (freedom of expression).

### **The Bill**

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3. The Bill amends the Local Government Act 2002 (the principal Act) to improve transparency and strengthen public trust and confidence in decision-making of local authorities. To achieve this, the Bill seeks to better align transparency requirements of members of local authorities with Members of Parliament and the Executive Council.
4. The Bill provides for the establishment of a register of pecuniary and other specified interests for members of local authorities, such as directorships, business interests, employment and property.
5. The Bill provides for the requirement for local authorities to maintain and publish the register of pecuniary and other specified interests.
6. The Bill creates an offence for members who do not meet the responsibilities provided for in the Bill.
7. The Bill makes a consequential amendment to the Privacy Act 1993 to recognise the register as a public register. We note the Privacy Act 1993 was repealed on 1 December 2020 and replaced with the Privacy Act 2020. The drafting of the Bill would need to be amended to reflect this.

### **Consistency of the Bill with the Bill of Rights Act**

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#### **Section 14 – Freedom of expression**

8. Section 14 of the Bill of Rights Act affirms the right to freedom of expression. This includes the freedom to seek, receive, and impart information and opinions of any kind

and in any form. This right has been interpreted as including the right not to be compelled to say certain things or provide certain information.<sup>1</sup>

9. Clause 4 of the Bill amends the Principal Act by inserting various sections that compel a member of a local authority to disclose personal information. Compelling an individual to provide information in the register *prima facie* engages s 14 of the Bill of Rights Act.
10. We consider s 14 to be engaged by the Bill. We have considered whether the limitations on the right to freedom of expression provided for by cl 4 of the Bill can be justified under s 5 in a free and democratic society. On the whole, we consider that any limitations on the right to freedom of expression are justifiable. However, there are two specific aspects of the Bill that we comment on below.

*Is the limitation justified and proportionate under s 5 of the Bill of Rights Act?*

11. Where a provision is found to limit a particular right or freedom, it may nevertheless be consistent with the Bill of Rights Act if it can be considered a reasonable limit that is demonstrably justifiable in terms of s 5 of that Act. The s 5 inquiry may be approached as follows:<sup>2</sup>
  - a. does the provision serve an objective sufficiently important to justify some limitation of the right or freedom?
  - b. if so, then:
    - i. is the limit rationally connected to the objective?
    - ii. does the limit impair the right or freedom no more than is reasonably necessary for sufficient achievement of the objective?
    - iii. is the limit in due proportion to the importance of the objective?
12. We consider that the objective of the Bill - to improve transparency and strengthen public trust and confidence in decision-making of local authorities – is sufficiently important to justify some limitations on the right to freedom of expression.

*Proposed subsection 42C(1)(g)*

13. Subsection 42C(1)(g) provides the requirement that every pecuniary interest return must contain:<sup>3</sup>

the location of real property in which the member of a local authority has a legal interest, other than an interest as a trustee, and a description of the nature of the real property.
14. We consider that this provision requires disclosure of the location of the personal residence of the member of a local authority; however, subs 42C(1)(g) does not specify whether this requires disclosure of the actual address of the member's residence. If this disclosure was required, in our view this would risk being overbroad, and may limit the

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<sup>1</sup> See, for example, *Slaight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (1977).

<sup>2</sup> *Hansen v R* [2007] NZSC 7 [123].

<sup>3</sup> Local Government (Pecuniary Interests Register) Amendment Bill, subs 42C(1)(g)

right to freedom of expression more than is reasonably necessary to achieve the objectives of the Bill.

15. However, we consider that the proper interpretation of subsection 42C(1)(g)<sup>4</sup> means that only the general location of real property is required to be disclosed. This appears to be the current practice in respect of the Register of Pecuniary and Other Specified Interests of Members of Parliament (the Register for Members of Parliament);<sup>5</sup> however, we note this is not made explicit in the Standing Orders.
16. We consider that a requirement to disclose the general location of a member's personal residence is rationally connected to the objectives of the Bill and does not go further than reasonably necessary to achieve those objectives. Accordingly, we consider it is a justifiable limitation on the right to freedom of expression.

*Proposed subsection 42D(1)(b)*

17. Clause 4 of the Bill inserts new s 42D(1) which provides a list of the type of information relating to the member of a local authority's activities that must be contained in every pecuniary interest return. Subsection 42D(1)(b) specifically provides the requirement that every pecuniary interest return must contain:<sup>6</sup>

a description of each gift (including hospitality and donations in cash or kind but excluding any donation made to cover expenses in an electoral campaign) received by the member of a local authority that has an estimated market value in New Zealand of more than \$500 and the name of the donor of each of those gifts (if known or reasonably ascertainable by the member)

18. This provision requires the disclosure of any gift over the value of \$500, including gifts from family. In comparison, under the Register for Members of Parliament, gifts from a family member (defined as the member's spouse or partner, or any parent, grandparent, child, stepchild, foster-child, grandchild, or sibling) are excluded from the disclosure requirements. It may be that the lack of such an exception in this Bill is a drafting error.
19. We have considered whether the lack of an exception for gifts from family members in the Bill means that the disclosure requirement is overbroad. On balance, we think that it is not. There may be situations where large gifts from family members ought to be disclosed for transparency reasons. Accordingly, we consider it is a justifiable limitation on the right to freedom of expression.

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<sup>4</sup> In accordance with section 6 of the Bill of Rights Act.

<sup>5</sup> Standing Orders of the House of Representatives, Appendix B.

<sup>6</sup> Local Government (Pecuniary Interests Register) Amendment Bill, subs 42D(1)(b).

## Conclusion

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20. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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