Submission of Taituarā to the Governance and Administration Select Committee regarding the Local Government (Pecuniary Interests Register) Amendment Bill

What is Taituarā?

Taituarā thanks the Governance and Administration Select Committee (for the Committee) for the opportunity to submit on the Local Government (Pecuniary Interests Register) Amendment Bill (the Bill).

Taituarā (formerly the NZ Society of Local Government Managers) is an incorporated society of 942 members[1] drawn from local government Chief Executives, senior managers, and council staff with significant policy or operational responsibilities. We are an apolitical organisation. Our contribution lies in our wealth of knowledge of the local government sector and of the technical, practical, and managerial implications of legislation.

Our vision is:

> *Professional local government management, leading staff and enabling communities to shape their future.*

Our primary role is to help local authorities perform their roles and responsibilities as effectively and efficiently as possible. We have an interest in all aspects of the management of local authorities from the provision of advice to elected members, to the planning and delivery of services, to the less glamorous but equally important supporting activities such as election management and the collection of rates.

[1] As of 31 October 2021

Taituarā supports the intent of the Bill

One of the five priority areas in our 2021-26 strategic plan is that "communities are highly engaged with local government". The informed and transparent conduct of the local democratic process is a key step to supporting community engagement.

Local authorities manage infrastructure and other assets with a value of more than $135 billion. They are responsible for planning and regulatory decisions (such as resource consenting and urban planning) that can shape a community for generations to come. The community has a right to assurance that those making these decisions (i.e., elected members) are making these decisions transparently and in the public interest. This applies to both financial and non-financial decisions (a resource consent being a good example of the latter).

One of the mechanisms Parliament has for promoting transparency is the requirement that members disclose their pecuniary interests.

Of course, local authorities can (and some do) maintain a register of pecuniary interests and require elected members to complete a return. But there is no statutory compulsion to operate a register. A council may therefore vote to amend or cease operation of a register at any time.

Not only is there no compulsion to have a register of interests, the sanction for not completing any disclosure required under the code of conduct is weak at best. The Local Government Act holds that a breach of a code of conduct is not an offence and leaves it to local authorities to investigate and enforce breaches of their code of conduct. This tends to make code of conduct inquiries both highly politicised and limit their effectiveness.

In short, an effective register of interests needs legislative compulsion and legislative sanctions for non-compliance. The Bill would achieve both.

A pecuniary interests register is one of a set of tools for managing elected member interests

We submit that this Bill is well intentioned but represents only a partial solution to the wider issue of promoting transparency and managing elected member conduct. In addition, there are also disclosures that local authorities must report against under the Public Benefit Entity reporting standards administered by the External Reporting Board.

The other part of the framework governing elected member interests is the Local Authorities (Members' Interests) Act 1968 (LAMIA). This is the legislation that

prevents elected members from discussing and voting on issues where they have a pecuniary interest not in common in the public, and from being an elected member in any local authority where they or a company they control have contracts of more than $25,000 per annum.

The existence of these disqualifications places a combination of a statutory block on elected members acting where they have a pecuniary interest and a statutory sanction where they do. What is does not do is require members to make an upfront declaration of their interests on assuming office– which might, for example, be relevant when determining committee assignments at the start of a triennium. Nor does the Act specifically and explicitly cover matters such as the receipt of gifts and hospitality.

LAMIA is complex, outdated, and difficult to interpret and apply. It predates accrual accounting, the modern financial management provisions, requirements to have a code of conduct and the introduction of mandatory competitive tendering for NZTA funded road works and its acceptance elsewhere. Some core concepts, such as pecuniary interest, are not defined. It is not always easy for elected members to determine whether their interests are pecuniary or whether they are in common with the public.

We are not alone in these views. The Office of the Auditor-General (which administers LAMIA) expresses its views on these matters in its Local Government Insights reports from time to time. In a similar vein, Local Government New Zealand has included a review of LAMIA in each of its last three 'manifestos' released pre-election.

As we have seen, the Bill would make a register mandatory, and to that extent might be a useful supplement to the list of mandatory contents of a code of conduct (as per Schedule Seven of the Local Government Act). Taituarā and Local Government New Zealand each consider these provisions also need a major review.

Our first preference would have been to address the register of interests as part of a review encompassing a first principles review of LAMIA and the codes of conduct provisions. That way, there would be a single clear, coherent set of provisions minimising confusion between multiple requirements. To take one example, LAMIA covers interests both elected member and of their spouse and direct family, the Bill appears to apply only to the elected member themselves. It is not clear if LAMIA applies to local board and community board members, the Bill appears to apply to one but not the other.

If the Committee wishes to proceed with the Bill on its own, then we would strongly recommend that the Committee recommend that LAMIA and the code of conduct

provisions be reviewed expeditiously (and jointly). The remainder of the comments in this submission apply if, the Committee decides to proceed with the Bill.

Recommendation

1. **That the Committee recommend to Parliament that the Local Authority Members' Interests Act 1968 and the code of conduct provisions of the Local Government Act 2002 be reviewed expeditiously. This would be desirable regardless of whether the Bill proceeds or not.**

The Bill may not adequately account for key differences between MPs and local authority elected members

The Bill is closely modelled on the register of MPs interests. There is one key difference between elected positions in Parliament and in local authorities.

As far as we are aware, there is no Member of Parliament who is not full-time in that role. While that is true for many Mayors and regional council chairs, and for some elected members in metropolitan local authorities, other members of local authorities and all local and community board members are part-time.

We'll return to this point in several places in the remainder of the submission. For now, we suggest that this difference means some aspects of the Bill need further thought.

The Bill does not cover all elected members in the local government sector

As currently worded the Bill does not cover all the elected positions within the local government sector. The Bill appears to cover only members of the local authority itself. For example, the proposed new section 42A appears to limit applicability of the register to members of the local authority, while the proposed new section 42B requires members of the local authority to make pecuniary interest returns.

The term members of a local authority include only the members of the elected council. Local board members and community board members are not members of a local authority.[2] Appointed members of council committees are not elected members of the council. Both are therefore excluded from the requirements. We are unclear whether this was a deliberate policy decision or the result of an oversight.

[2] At the time of writing the only local boards in existence are situated within the Auckland Council.

The Bill's stated aim is to improve transparency of decision-making processes in local government. The Local Government Act 2002 provides local board members with quite extensive decision-making authority within their local board areas Some of those local board areas contain populations larger than most local authorities. Taituarā considers that the transparency argument applies equally here – especiallly as the local board operates as a form of shared governance.

Similarly, some community boards (especially in the Deep South) maintain quite extensive delegations. Even in some areas where there are only limited delegations to community, members are still advocating on behalf of the community so the community should know if for example member x's views on a major resource consent could be influence by the applicant being his employer.

Local authorities may appoint non-elected members to council committees. For example, its reasonably common for councils to appoint iwi representatives to committees with resource management responsibilities. Levels of delegation to committees vary from council to council, and committee to committee. But again, these bodies may be taking significant decisions. We consider the transparency argument applies here also.

As a general observation, one of the issues with the law around member conduct is that its not universal in its coverage. This can appear arbitrary to the public and members themselves and makes it more difficult to hold members to account for their behaviour. This is one of the reasons we support a full review of these provisions. The Committee should avoid these situations if it can.

Recommendation

2. That members of local boards, community boards and members appointed to council committees be brought within coverage of the Bill.

The register relating to the member's position need some clarification

We have several points where additional clarification would be helpful.

We are unsure why the proposed s42C(1)(a) refers to companies, and the proposed s42C(1)(b) refers to companies and business entities. The former captures companies where the member has a significant holding of voting rights, and the latter all companies and entities where the member has a pecuniary interest. We would have

thought transparency would require consistency in terminology and that both provisions should refer to companies and business entities.

The proposed section 42C(1)(e) requires disclosure of 'interests' in organisation that receive, or have applied for, funding from the local authority. Good examples would be various sporting, cultural or local charitable organisations. We have no concerns about the underlying principle, but the provision as it reads refers only to 'an interest' without specifying what constitutes an interest.

For example, was the intent that the member disclose that they are a member of a particular organisation or that they are a member of the governing body of the organisation? We suspect the intent was the former. The legislation should be as clear as possible on this point as 'grey areas' create multiple interpretations and potential loopholes that would undermine transparency.

The proposed section 42C(1)(g) requires disclosure of any real property in which the member has an interest. We have had concerns expressed to us that a literal reading of the clause might require disclosure of an address of a family home or investment property. It appears the practice with the Parliamentary register is that the member discloses the property and either a suburb or general locale (e.g., family home, Karori, Wellington; investment property, Mangawhai etc). That appears acceptable but should be clarified in legislation for example by adding "the suburb or general location of any real property."

Many of the current codes in local authorities require disclosure of properties within the local authority itself. An elected member with a family home in the district and say, a bach in another district, would need only disclose the former. Local authority elected members take an oath to advance the interests of their district or region (as the case may be). A conflict of interest arising from property ownership does not seem likely.

One further issue, it is common for Māori elected members to be part owners of properties that are Māori freehold land. Some of these properties may have hundreds, or even thousands of owners. Some may therefore own multiple properties across the district. If owned by a trust this interest will be captured by the proposed new s42C(1)(d) and a single 'properties as a trust of xxxx trust' would be sufficient. If owned in this capacity a simple number of properties rather than a list would be sufficient for transparency's sake.

Recommendations

That:

3. **the proposed new s42C(1)(a) be extended to cover all business interests (as per the proposed new s42C(1)(b)**
4. **that the proposed new s42C(1)(e) be amended by deleting the words "has an interest in an organisation" and replace them with "is a member of an organisation or trust"**
5. **that the proposed new s42C(1)(g) be amended by inserting the words "the suburb or general" before the word "location"**
6. **that the proposed new s42C(1)(g) be amended by inserting the words "within the boundaries of the local authority" between the word's "property" and "in".**

Disclosure of payments must recognise that being an elected member is often a part-time role

We have previously seen that many elected members are part time. This means that the disclosure of payments could form a significant part of a members return.

This raises several issues. For example, any elected member in employment would be required to disclose their wage and salary payments – forgoing some degree of privacy over activities undertaken in a private capacity. Yet other parts of the disclosure require an elected member to identify their employer. In provincial and rural New Zealand, it is common for elected members to have a small business or farming background. Would they disclose any remuneration received by the business/farm, a profit, a salary (where paid) or drawings? What about payment for reimbursing of out-of-pocket expenses?

We submit that there should be a further exemption added to the proposed new s42D(c) that covers remuneration received from any employment listed in the return.

To take another example, a real-life Deputy Mayor is employed by an energy company. In pre-lockdown times that employment required him to travel overseas for business purposes on a semi-regular basis. As worded, this Bill would require the Deputy Mayor to disclose each business trip. The Deputy Mayor would be required to disclose that he is employed by the energy company, thus allowing the public to assess whether there is a conflict of interest.

The point is that the greater the level of disclosure required around employment, the more disincentive Parliament provides for people in employment to stand.

Recommendation

7. That the return relating to member activities be amended to exclude wages or salaries from employment and travel for employment purposes from the disclosure requirements.

The definition of family is open to interpretation

Elected members would be required to disclose any overseas travel undertaken in cases where the travel is not paid for by the member or their family. The definition of the term 'family' becomes critical for compliance with the provision. We doubt Parliament intended that this would apply in the sense of the extended family (e.g., Aunts, second cousins etc). We suggest the Bill be amended to clarify that the exemption would apply only where travel costs were met in whole or part by the member themselves or their immediate family (spouse or civil union partner, parent, or child).

Recommendation

8. That the proposed section 42D(2)(b) be amended by adding the word 'immediate' before the word 'family'.