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Christchurch City Council submission on the Local Government (Pecuniary Interests Register) Amendment Bill

Introduction

1. Christchurch City Council (the Council) thanks the Governance and Administration Select Committee for the opportunity to provide comment on the Local Government (Pecuniary Interests Register) Amendment Bill.
2. The Council supports the stated purpose of the Bill, which is to improve transparency and strengthen public trust and confidence in local authority decision-making.
3. The Council already has in place a register similar to that proposed in the Bill, also based on the parliamentary model. It agrees with the intention to introduce statutory provisions requiring all local authorities to do the same, and making non-compliance an offence.
4. The Council's Register of Pecuniary and Other Specified Interests is published on the Council's website, at: <https://ccc.govt.nz/how-the-council-works/organisation-structure/register-of-interests>.
5. The Council wishes to appear before the Committee.

Submission

Definition of 'Pecuniary Interest':

6. For the purposes of the Council's register, a pecuniary conflict of interest may arise "if an elected member could reasonably be perceived as standing to gain or lose financially from decisions or acts for which he or she has a responsibility, or from information to which he or she has access".
7. In the Bill, a pecuniary interest means "a matter or activity of financial benefit to the member that is required to be declared". In the Council's view, being involved in the matter or activity may not necessarily mean a financial benefit and the definition should be amended to reflect that.
8. Also, although the use of 'activity' is understood in the context of the Bill, the intention is to insert the definition in section 5(1) of the Local Government Act 2002 (LGA 02), which already defines 'activity' in relation to a local authority.

Recommendation:

The definition of 'Pecuniary Interests' be amended to read (for example) "a matter or activity in which the member has a financial or other interest that is required to be declared".

If the Committee thinks it necessary to do so, address any issue that might arise from the interpretation of 'activity' in the LGA 02.

Local Authorities (Members' Interests) Act 1968:

9. Any discussion about pecuniary interests must include the Local Authorities (Members' Interests) Act 1968 (LAMIA). As well as relating to the making of contracts between local authorities and its members, the Act restricts the actions of such members when matters in which they have a pecuniary interest are under consideration.
10. Given the short lead-up time before introduction of the Bill, the Council acknowledges there's been little opportunity to take a more co-ordinated approach to existing and proposed pieces of legislation. The LAMIA is urgently in need of review, with the Auditor-General finding it "to be somewhat out of date and difficult to understand, and the rules are not always easy to apply in a modern local government context" (the OAG's guide on managing conflicts of interest, June 2020).
11. There are a number of discrepancies between the two. For example, while the Bill requires only a member's interests to be declared, under the LAMIA if a member's spouse or partner is interested in a company contracting with a local authority, then the member is deemed to have an interest as well.
12. Also, the rule in the LAMIA is triggered if a member (or his or her spouse or partner) singly or together own 10% or more of the shares in the contracting party. The Bill requires an interest to be named if a member controls 5% or more of voting rights.
13. There is no provision in the LAMIA for a member, either on election or annually, to declare an interest - deemed or personal. The Bill would require the member to declare a personal interest but not if the member's spouse or partner was the party holding the interest. There is nothing in either that would alert the public, or the local authority, to any potential risk from a breach of the contracting rule.
14. Again from the Auditor-General, "the rules for managing conflicts of interest in the local government sector are generally out of step with the approach other sectors take, for example, under the Crown Entities Act 2004. We will continue to advocate for a review of [the LAMIA]" (the OAG - Insights into local government: 2020).

Recommendation:

The Committee considers deferring any decision on the Bill until such time as a review of the Local Authorities (Members Interests) Act 1968 can be carried out and the outcome is able to be taken into account in any changes recommended in respect of the Bill.

If that is not possible, the Committee considers recommending to Parliament that the Local Authorities (Members' Interests) Act be reviewed as soon as practicably possible.

Codes of Conduct/Investigation and Prosecution of Offences:

15. All local authorities must adopt a Code of Conduct which sets out “understandings and expectations about the manner in which members may conduct themselves while acting in their capacity as members” (cl.15 Sch.7 LGA 02). The Act requires members to comply with the Code.
16. At the time the Council adopted its Register of Pecuniary and Other Specified Interests, it also made changes to the Council’s Code of Conduct. Any complaints raised by members about other members not complying with their obligations to complete returns, were to be treated as complaints made under the Code.
17. However, while Councils are bound by statute to have a Code of Conduct, there is no similar statutory power to impose meaningful sanctions for breach, following a complaints process.
18. By comparison, if passed, the Bill would amend the provisions in the LGA 02 relating to offences committed by members and penalties to be imposed. A member who contravenes the obligation to make a pecuniary interest return would be liable, on conviction, to a fine not exceeding \$5,000.
19. While acknowledging this would add considerable weight to the requirements in the Bill, the Council’s concern is that the only remedy available for breach is by initiating proceedings against a member. This would mean taking a prosecution through a judicial system that is focused on Court appearances and which is likely to be lengthy and expensive.
20. The Council believes consideration should be given to an additional process that would enable a possible breach to be investigated and, depending on the outcome, would result in either the matter being settled, or the commencement of proceedings as contemplated by the Bill.
21. One way of achieving this would be to include in the Bill a further amendment of the LGA 02 that would enable local authorities to impose meaningful sanctions on members found to have breached their Codes of Conduct. The matters constituting a breach could include, for example, the failure to provide a pecuniary interest return.
22. If the affected parties couldn’t agree to be bound by the outcome of this process then the local authority would have the opportunity to decide whether or not a matter is referred for prosecution.
23. Another option may be to consider adopting similar requirements to those in the LAMIA for investigating and instituting proceedings. There are two offences under the Act, and these can only be investigated by the Auditor-General, who will determine whether or not there has been a breach. Both the investigation and the final resolution of the matter are primarily between the member and the Auditor-General (June 2020 guide).
24. One outcome might be that although an offence appears to have been committed, the circumstances do not warrant prosecution. If they do, only the Auditor-General can institute proceedings.

Recommendation:

The Committee considers deferring its report on the Bill until such time as the Committee has had the opportunity to consider the statutory powers of local authorities in respect of Codes of Conduct and the investigation and prosecution of offences under the Local Authorities (Members’ Interests) Act 1968.

If that is not possible, the Committee considers recommending to Parliament that the statutory powers of local authorities in respect of Codes of Conduct be reviewed as part of the review of the Local Authorities (Members' Interests) Act and undertaken as soon as practicably possible.

Other Matters:

25. The Bill excludes a blind trust from the definition of a business entity. The Committee might consider, in the interests of clarity, defining 'blind trust'.

Recommendation:

The Committee considers including a definition of a blind trust in the Bill, for example, as "a trust established by a member giving the trustee(s) full control over the trust and its assets".

26. The Bill would require a member of a local authority to name any organisation or trust in which the member has an interest that receives, or has applied for, funding from that local authority. The Committee might consider that the term 'interest' could be more clearly described.

Recommendation:

The Committee considers amending the proposed section 42C(1)(e) to read:
"if a member of a local authority has an interest **as a member, a member of the governing body or is a trustee of** an organisation or trust that receives funding from the local authority, or has applied to receive funding from that local authority, the name of that organisation or trust and a description of the main activities of that organisation or trust".

27. If a member is employed, the Bill would require the member to name his or her employer, but there is no similar obligation in respect of a member providing goods and services to an organisation as an independent contractor. The Council suggests the Committee considers whether or not it would be appropriate to include this in the proposed amendments.

Recommendation:

The Committee considers amending the proposed section 42C(1)(c) to include a member providing goods and services as an independent contractor.

28. The Parliamentary register requires a member to disclose the name (but not the amount) of any debt of more than \$50,000 owed by and/or to the member. Also, a description of all debts of more than \$500 owed by a member and discharged (in whole or in part) by another named person.

It is not clear why these have not been incorporated into the Bill, given the intention is to better align the transparency requirements between members of local authorities and members of Parliament.

29. Recommendation:

The Committee considers requiring the pecuniary interest return to include the name (but not the amount) of any debt of more than \$50,000 owed by and/or to a member, and a description of all debts of more than \$500 owed by the member and discharged (in whole or in part) by another named person.

30. The Bill would also require a return to include information about a member's travel outside New Zealand, but excluding travel and accommodation costs paid by the member and/or a member of his or her family. For the sake of clarity the Council suggests the Committee considers defining 'family', using the definition contained in the Parliamentary register.

Recommendation:

The Committee considers defining 'family' in the Bill as "the spouse or partner, or any parent, grandparent, child, stepchild, foster-child, grandchild, or sibling of a member".

Conclusion:

31. The key point the Council wishes to make to the Committee is:

The Committee considers recommending that a review of the Local Authorities (Members' Interests) Act 1968, and of the statutory powers of local authorities in respect of Codes of Conduct be undertaken, either at the same time as the Committee's consideration of the Bill, or as soon as practicably possible thereafter.

Thank you for the opportunity to provide this submission.

For any clarification on points within this submission please contact Ian Thomson, Senior Legal Counsel – Public & Regulatory (Ian.Thomson@ccc.govt.nz) or Jo Daly, Council Secretary (Jo.Daly@ccc.govt.nz).

Yours faithfully



Lianne Dalziel
Mayor of Christchurch