

## Briefing Paper: Pecuniary Interests

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Date: 2 February 2023

### Ngā whāinga | Purpose

Newly introduced legislation (Local Government Pecuniary Interests Act 2022) requires Council to keep a register of all pecuniary interests of all elected members, in addition to those required under the Local Authorities Members Interest Act (LAMIA). This briefing paper provides information related to the new reporting obligations for pecuniary interests and the revised form for completion by all elected members by 10 February 2023.

### Horopaki | Context

All elected members are currently required to declare any conflicts of interest (including pecuniary) in accordance with the LAMIA. The introduction of the new amendment bill on pecuniary interests is **an addition** to the requirements of LAMIA and will be audited by the Auditor-General on a yearly basis. Failure to comply is punishable with a fine of up to \$5,000 for any member who does not file a formal declaration. These provisions have been added to the Local Government Act, sections 54A to 54I as at 20 November 2022.

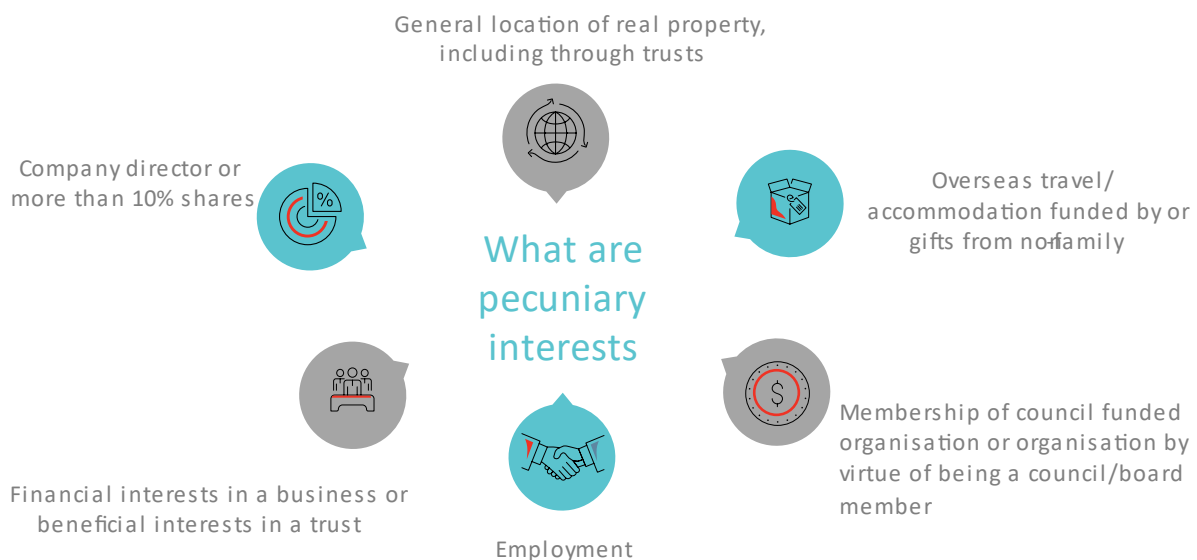
### Ngā kōrerorero | Discussion

#### Who must file a declaration?

All elected members, including community board members.

#### What information should be declared?

At a high level, the diagram below indicates what needs to be declared. For more detailed information please refer to Attachment 1 which has the relevant sections from the LGA (sections 54E and 54F).



### **How do I make a declaration?**

There is a form attached to this briefing paper – the legislation change requires a lot more detail than what has been required in the past but we will look at opportunities to combine the 2 forms for your convenience moving forward.

### **What happens if I don't make a declaration?**

If you fail to submit a declaration by the due date, you may be liable for a fine of up to \$5,000.

### **What happens if I make a mistake?**

The onus is on the member to provide accurate information and request correction if it is incorrect.

### **When does the form need to be submitted by?**

10 February 2023 is the first date for reporting. You will be reminded annually thereafter by the Registrar to submit your declaration.

### **Who does the form need to be submitted to?**

Your declaration must be provided to the appointed Registrar. The Registrar is appointed by the Chief Executive to compile and maintain the register of members' pecuniary interests and provide advice and guidance to members in connection with their obligations. Councils' Registrar is Aisha Huriwai who can be contacted via email at [Aisha.huriwai@fndc.govt.nz](mailto:Aisha.huriwai@fndc.govt.nz).

A summary of the register is to be made publicly available - disclosed in accordance with its purpose.

## **E whai ake nei | Next Steps**

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Please complete the form and return to Aisha Huriwai by 12 noon on Friday 10 February 2023. If you have any queries or need advice, please contact Aisha Huriwai who will manage your request.

## **Ngā tāpiritanga | Attachments**

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Attachment 1 – Relevant Sections of the Local Government Act sections 54A to 54I

Attachment 2 – Declaration Form

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Extract from the Local Government Act.

Subpart 3—Register of members' pecuniary interests

Subpart 3: inserted, on 20 November 2022, by section 4 of the Local Government (Pecuniary Interests Register) Amendment Act 2022 (2022 No 24).

#### 54A Register of members' pecuniary interests

- (1) A local authority must keep a register of the pecuniary interests of—
  - (a) members of the local authority; and
  - (b) members who have been elected under the Local Electoral Act 2001 to a community board that is part of the local authority; and
  - (c) members who have been elected under the Local Electoral Act 2001 to a local board that is part of the local authority.
- (2) The register must comprise the pecuniary interest returns that—
  - (a) are made by members under section 54C; and
  - (b) contain all information in any pecuniary interest return that is required to be disclosed under sections 54E and 54F, and include any notifications made under section 54D of errors or omissions in those returns.
- (3) The local authority must—
  - (a) make a summary of the information contained in the register publicly available; and
  - (b) ensure that information contained in the register—
    - (i) is only used or disclosed in accordance with the purpose of the register; and
    - (ii) is retained for 7 years after the date on which a member provides the information, and is then removed from the register.

Section 54A: inserted, on 20 November 2022, by section 4 of the Local Government (Pecuniary Interests Register) Amendment Act 2022 (2022 No 24).

#### 54B Purpose of register

The purpose of the register of members' pecuniary interests is to record members' interests so as to provide transparency and to strengthen public trust and confidence in local government processes and decision-making.

Section 54B: inserted, on 20 November 2022, by section 4 of the Local Government (Pecuniary Interests Register) Amendment Act 2022 (2022 No 24).

#### 54C Members to make pecuniary interest returns

- (1) A member described in section 54A(1)(a), (b), or (c) must make a pecuniary interest return containing the information specified in sections 54E and 54F in respect of the 12-month period that ended on the day that is 1 month before each date specified for the return in subsection (2).
- (2) The member must make the pecuniary interest return by the following dates:
  - (a) the day that is 120 days after the date on which the member comes into office under section 115 of the Local Electoral Act 2001;
  - (b) the last day of February in each subsequent year.
- (3) The member must make the return by providing it to the Registrar.

Section 54C: inserted, on 20 November 2022, by section 4 of the Local Government (Pecuniary Interests Register) Amendment Act 2022 (2022 No 24).

#### 54D Accuracy of information included in pecuniary interest return

- (1) When making a pecuniary interest return under section 54C, a member must ensure that the information contained in the return is accurate.
- (2) However, if a member becomes aware of an error or omission in any return that the member has made, the member must advise the Registrar of that error or omission as soon as practicable after becoming aware of it.
- (3) When advised of an error or omission in a pecuniary interest return, the Registrar must correct the register of members' pecuniary interests accordingly.

Section 54D: inserted, on 20 November 2022, by section 4 of the Local Government (Pecuniary Interests Register) Amendment Act 2022 (2022 No 24).

#### 54E Contents of pecuniary interest return relating to member's position

- (1) Every pecuniary interest return must contain the following information:
  - (a) the name of each company of which the member is a director or holds or controls more than 10% of the voting rights and a description of the main business activities of each of those companies:

- (b) the name of every other company or business entity in which the member has a pecuniary interest, other than as an investor in a managed investment scheme, and a description of the main business activities of each of those companies or business entities:
- (c) if the member is employed, the name of each employer of the member and a description of the main business activities of each of those employers:
- (d) the name of each trust in which the member has a beneficial interest:
- (e) the name of any organisation or trust and a description of the main activities of that organisation or trust if—
- (i) the member is a member of the organisation, a member of the governing body of the organisation, or a trustee of the trust (as applicable); and
  - (ii) the organisation or trust receives funding from, or has applied to receive funding from, the local authority, local board, or community board to which the member has been elected:
- (f) the title and description of any organisation in which the member holds an appointment by virtue of being an elected member:
- (g) the location of real property in which the member has a legal interest, other than an interest as a trustee, and a description of the nature of the real property:
- (h) the location of real property, and a description of the nature of the real property, held by a trust to which the following apply:
- (i) the member is a beneficiary of the trust; and
  - (ii) the member knows or ought reasonably to know that the member is a beneficiary of the trust; and
  - (iii) it is not a unit trust whose name is disclosed under subclause (1)(d); and
  - (iv) it is not a retirement scheme whose membership is open to the public.
- (2) For the purposes of subsection (1)(b), a member does not have a pecuniary interest in a company or business entity (entity A) merely because the member has a pecuniary interest in another company or business entity that has a pecuniary interest in entity A.
- (3) For the purposes of subsection (1)(e), a member is not required to disclose the name and a description of the main activities of an organisation that is a council-controlled organisation.
- (4) For the purposes of subsection (1)(g) and (h), a member is not required to disclose the street address of the real property, but must provide the general location (for example, the suburb and city in which it is located).
- (5) For the purposes of this section,—
- business entity** means any body or organisation, whether incorporated or unincorporated, that carries on any profession, trade, manufacture, or undertaking for pecuniary profit, and includes a business activity carried on by a sole proprietor, but does not include any blind trust
- company** has the same meaning as in section 2(1) of the Companies Act 1993, and includes—
- (a) a body corporate that is incorporated outside of New Zealand:
  - (b) a society incorporated under the Industrial and Provident Societies Act 1908 or any former Industrial and Provident Societies Act
- employed**—
- (a) means employed under a contract of service; but
  - (b) does not include holding—
- (i) the position of an elected member of a local authority, local board, or community board (as applicable); or
  - (ii) any other position for which the person in question would not be qualified unless he or she had been elected a member of a local authority, local board, or community board (as applicable)
- managed investment scheme** has the same meaning as in section 9(1), (2), and (4) of the Financial Markets Conduct Act 2013.

Section 54E: inserted, on 20 November 2022, by section 4 of the Local Government (Pecuniary Interests Register) Amendment Act 2022 (2022 No 24).

#### 54F Contents of pecuniary interest return relating to member's activities

- (1) Every pecuniary interest return must also contain the following information:
- (a) for each country (other than New Zealand) that the member travelled to,—
- (i) the name of the country; and
  - (ii) the purpose of travelling to the country; and
  - (iii) the name of each person who contributed (in whole or in part) to the costs of the travel to and from the country; and
  - (iv) the name of each person who contributed (in whole or in part) to the accommodation costs incurred by the member while in the country:

- (b) 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 and the name of the donor of each of those gifts (if known or reasonably ascertainable by the member) if—
- (i) the gift has an estimated market value in New Zealand of more than \$500; or
  - (ii) the combined estimated market value in New Zealand of all gifts from the donor is more than \$500:
- (c) a description of each payment received by the member for activities in which the member is involved other than—
- (i) the salary or allowances paid to that person under the Remuneration Authority Act 1977 or this Act; and
  - (ii) any payment the member received from an interest required to be disclosed under section 54E; and
  - (iii) any payment made in respect of any activity the member ceased to be involved in before becoming a member.
- (2) The information referred to in subsection (1)(a) does not have to be included in the pecuniary interest return if the travel costs and accommodation costs were paid in full by the following or any combination of the following:
- (a) the member;
  - (b) a member of the member's family.
- (3) The information referred to in subsection (1)(b) does not have to be included in the pecuniary interest return if the gift was from a member of the member's family unless the member, taking the purpose of the register into account (see section 54B), considers the information should be included.
- (4) For the purposes of this section, member of the member's family means the member's spouse, partner, parent, grandparent, child, stepchild, foster child, grandchild, or sibling.

Section 54F: inserted, on 20 November 2022, by section 4 of the Local Government (Pecuniary Interests Register) Amendment Act 2022 (2022 No 24).

#### 54G Registrar

- (1) A local authority must appoint a Registrar to—
- (a) compile and maintain the register of members' pecuniary interests; and
  - (b) provide advice and guidance to members in connection with their obligations under this subpart.
- (2) The chief executive of a local authority may be the Registrar under subsection (1).

Section 54G: inserted, on 20 November 2022, by section 4 of the Local Government (Pecuniary Interests Register) Amendment Act 2022 (2022 No 24).

#### 54H Responsibility of members

- (1) It is the responsibility of each member to ensure that they fulfil the obligations imposed on them under this subpart.
- (2) A Registrar is not required to—
- (a) notify any member of—
    - (i) that member's failure to make a pecuniary interest return by the due date; or
    - (ii) any error or omission in that member's pecuniary interest return; or
  - (b) obtain any pecuniary interest return for a member.
- (3) To avoid doubt,—
- (a) a member's obligations under this subpart are in addition to any obligations under, and do not affect the application of, the Local Authorities (Members' Interests) Act 1968; and
  - (b) a pecuniary interest that a member has declared under this subpart is not necessarily an interest for the purposes of the Local Authorities (Members' Interests) Act 1968.

Section 54H: inserted, on 20 November 2022, by section 4 of the Local Government (Pecuniary Interests Register) Amendment Act 2022 (2022 No 24).

#### 54I Definition of Registrar

In this subpart, Registrar means the Registrar appointed under section 54G.

Section 54I: inserted, on 20 November 2022, by section 4 of the Local Government (Pecuniary Interests Register) Amendment Act 2022 (2022 No 24).