

House of Representatives
Supplementary Order Paper

Tuesday, 26 March 2013

Local Electoral Amendment Bill (No 2)

Proposed amendments

Holly Walker, in Committee, to move the following amendments:

Clause 27

In *clause 27*, after *new section 103A* (after line 16 on page 18), insert:

“103AB Limits on electoral donations

- “(1) No candidate shall accept an electoral donation from any 1 individual or group exceeding \$5,000, or more than 1 electoral donation from any 1 individual or group exceeding a total value of \$5,000.
- “(2) No candidate shall accept any anonymous electoral donation over \$500.
- “(3) No candidate shall accept an electoral donation from any overseas person.
- “(4) If a candidate or his or her agent receives an electoral donation contrary to **subsection (1), (2), or (3)**, the candidate must within 20 working days—
 - “(a) give back to the donor the amount of the donation, or its value; or
 - “(b) if this is not possible, including in the case of an anonymous donation where the identity of the donor cannot reasonably be ascertained, pay the amount of the donation, or its value, to the Electoral Commission.
- “(5) All amounts received by the Electoral Commission under **subsection (4)** must be paid into a Crown Bank Account.”

In *clause 27*, *new section 103F*, replace “\$1,500” (line 15 on page 19) with “\$500”.

In *clause 27*, delete *new sections 103H and 103I* (line 24 on page 19 to line 20 on page 20).

Clause 28

In *clause 28*, replace subclause (2) (line 32 on page 20) with:

- (2) In section 104, insert in their appropriate alphabetical order:
- “**candidate**, for the avoidance of doubt, means a candidate for any of the elections referred to in section 7(a) to (g) and (i)
 - “**overseas person**, for the purpose of **section 103AB**, means—
 - “(a) an individual who resides outside of New Zealand and is not a New Zealand citizen or registered as an elector;
 - or
 - “(b) a body corporate incorporated outside New Zealand; or
 - “(c) an unincorporated body that has its head office or principal place of business outside New Zealand
 - “**third party** means any person or group that is not a candidate or an agent of a candidate”.
- (2A) In section 104, definition of **electoral donation**, paragraph (a), replace “\$1,000” with “\$500” in each place.
- (2B) In section 104, definition of **electoral expenses**, after paragraph (b), insert:
- “(ba) includes expenses incurred by a third party as provided for in **section 113A**; and”.

Clause 32A

In *clause 32A*, insert as subclause (1) (after line 12 on page 25):

- (1) Repeal section 113(4).

New clause 32B

After *clause 32A* (after line 16 on page 25), insert:

32B New section 113A inserted (Election expenses attributed in respect of advertisements authorised by candidate or party)

After section 113, insert:

“113A Election expenses attributed in respect of advertisements authorised by candidate or party

- “(1) This section applies if an advertisement for a candidate under section 113, published by a third party, is authorised in writing by 1 or more candidates or the agent or agents of 1 or more candidates.
- “(2) The cost of the advertisement incurred by the third party or any agent of the third party forms part of the election expenses of the candidate or candidates who authorised the advertisement. In the case where more than one candidate authorised an election advertisement, the expense may be apportioned between the candidates as allowed for in section 112(2).”

New clause 33A

After *clause 33* (after line 22 on page 25), insert:

33A New Part 6A inserted

After section 120, insert:

“Part 6A

“Pecuniary interests of members of local authorities

“120A Pecuniary interests

- “(1) Members of local authorities must make returns of pecuniary interests in accordance with **Schedule 2A**.
- “(2) Returns of pecuniary interests made by members of local authorities are to be maintained in a register in accordance with the provisions in **Schedule 2A**.”

Clause 34

Replace *clause 34* (lines 23 to 24 on page 25), with:

34 Cross-heading above section 132 replaced

Replace the cross-heading above section 132 with “*Electoral expenses, electoral donations, and return of pecuniary interests*”.

New clause 34A

After *clause 34* (after line 24 on page 25), insert:

34A New section 132A inserted (Receipt of electoral donations in breach of section 103AB)

After section 132, insert:

“132A Receipt of electoral donations in breach of section 103AB

- “(1) Every candidate or other person commits an offence who wilfully contravenes **section 103AB** and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$10,000.
- “(2) Every person who enters into an agreement or enters into an arrangement or understanding with any other person that has the effect of circumventing **section 103AB** is liable on summary conviction to a fine not exceeding \$5,000.”

New clause 35A

After *clause 35* (after line 26 on page 25), insert:

35A New sections 135A, 135B, and 135C inserted

After section 135, insert:

“135A Failure to account for expenditure on advertising by third party

- “(1) Every candidate commits an offence who wilfully contravenes **section 113A** and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$10,000.

“(2) Every person who enters into an agreement or enters into an arrangement or understanding with any other person that has the effect of circumventing **section 113A** is liable on summary conviction to a fine not exceeding \$5,000.

“**135B Failure to transmit return of pecuniary interests**

“(1) Any member of a local authority commits an offence who fails to transmit a return of pecuniary interests in accordance with **section 120A** and **Schedule 2A**.

“(2) Every person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$1,000 and, if he or she is the member of a local authority whose return is outstanding, to a further fine not exceeding \$400 for every day on which he or she continues to act until the return is transmitted.

“**135C False return of pecuniary interests**

“(1) Any member of a local authority who transmits a return of pecuniary interests knowing that it is false in any material particular commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$10,000.

“(2) Any member of a local authority commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 who transmits a return of electoral expenses that is false in any material particular unless the candidate proves—

“(a) that he or she had no intention to misstate or conceal the facts; and

“(b) that he or she took all reasonable steps to ensure that the information was accurate.”

New clause 38A

After *clause 38* (after line 33 on page 26), insert:

38A New Schedule 2A inserted

After Schedule 2, insert:

Schedule 2A

ss 19, 120A

**Pecuniary interests of members of local
authorities**

1 Interpretation

(1) In this schedule, unless the context otherwise requires,—
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

company means—

- (a) a company registered under Part 2 of the Companies Act 1993:
- (b) a body corporate that is incorporated outside New Zealand

effective date of the return means the date as at which the return is effective as required by **clause 2(1) or 3(1)** (as the case may be)

election has the same meaning as in section 5(1)

election day, in relation to any election, means the day appointed in any notice under section 52 or 65 as the date of the election

employed—

- (a) means employed under a contract of service; but
- (b) does not include holding the position of a member of a local authority or 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

government funding means funding from any one or more of the following:

- (a) the Crown:
- (b) any Crown entity:
- (c) any State enterprise:
- (d) any local authority

local authority has the same meaning as in section 5(1)

member means a member of a local authority and includes the Mayor of a local authority

Minister has the same meaning as in section 5(1)

regional council has the same meaning as in section 5(1)

register means the Register of Pecuniary Interests of Members of Local Authorities established by **clause 11**

registered superannuation scheme means any superannuation scheme that is registered under the Superannuation Schemes Act 1989 (including any scheme referred to in section 19H of the Government Superannuation Fund Act 1956)

registrar—

- (a) means the Local Government Commission or a person appointed by the Local Government Commission, with the agreement of the Minister, to act as registrar; and
- (b) includes every person who has been authorised by the registrar to act on his or her behalf

territorial authority has the same meaning as in section 5(1)

the House means the House of Representatives

voting right means a currently exercisable right to cast a vote at meetings of the owners or proprietors of a business entity, not being a right to vote that is exercisable only in relation to a special, immaterial, or remote matter that is inconsequential to control of the entity.

- (2) Every amount specified in this schedule is inclusive of goods and services tax (if any).
- (3) Every reference in this schedule to a person elected at an election includes a person elected as a consequence of a recount or an election petition relating to that election.

Return of pecuniary interests

2 Duty to make initial return of pecuniary interests

- (1) Every member must make an initial return of pecuniary interests as at the day that is 90 days after the date the member makes the declaration required by clause 14 in Schedule 7 of the Local Government Act 2002.
- (2) **Subclause (1)** does not apply in the case of a member who is elected at an election, if election day for the election is after 1 July in the year of the election.
- (3) An initial return must be transmitted by the member to the registrar within 30 days of the effective date of the return.

3 Duty to make annual return of pecuniary interests

- (1) Every member must make an annual return of pecuniary interests in each year as at 31 January.
- (2) The annual return must be transmitted by the member to the registrar by the last day of February in each year in which an annual return must be made.

4 Contents of return relating to member's position as at effective date of return

- (1) Every return of pecuniary interests must contain the following information as at the effective date of the return:
 - (a) the name of each company of which the member is a director or holds or controls more than 5% of the voting rights and a description of the main business activities of each of those companies; and
 - (b) the name of every other company or business entity in which the member has a pecuniary interest and a description of the main business activities of each of those companies or entities; and
 - (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; and

- (d) the name of each trust in which the member has a beneficial interest, except as disclosed under **paragraph (g)**; and
 - (e) if the member is a member of the governing body of an organisation or a trustee of a trust that receives, or has applied to receive, government funding, the name of that organisation or trust and a description of the main activities of that organisation or trust, unless the organisation or trust is a Government department, a Crown entity, or a State enterprise, or a local authority; and
 - (f) the location of each parcel of real property in which the member has a pecuniary interest, unless the member has no beneficial interest in the real property; and
 - (g) the name of each registered superannuation scheme in which the member has a pecuniary interest; and
 - (h) the name of each debtor of the member who owes more than \$50,000 to the member and a description of each of the debts that are owed to the member by those debtors; and
 - (i) the name of each creditor of the member to whom the member owes more than \$50,000 and a description of each of the debts that are owed by the member to those creditors.
- (2) For the purposes of **subclause (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) The description of a debt under **subclause (1)(h) and (i)** must include disclosure of the rate of interest payable in relation to the debt if that rate of interest is less than the most recent rate of interest prescribed by regulations made under section ND 1F of the Income Tax Act 2004 (or any successor to that provision) as at the effective date of the return.

5 Relationship property settlements and debts owed by certain family members do not have to be disclosed

A member does not have to disclose—

- (a) a relationship property settlement, whether the member is a debtor or creditor in respect of the settlement; or
- (b) the name of any debtor of the member and a description of the debt owed by that debtor if the debtor is the member's spouse or domestic partner, or any parent, child, step-child, foster-child, or grandchild of the member.

6 Short-term debts for supply of goods or services do not have to be disclosed

A member does not have to disclose the name of any debtor or creditor of the member and a description of the debt owed by that debtor or to that creditor if the debt is for the supply of goods or services and payment is required—

- (a) within 90 days after the supply of the goods or services, or
- (b) because the supply of the goods or services is continuous and periodic invoices are rendered for the goods or services, within 90 days after the date of an invoice rendered for those goods or services.

7 Contents of return relating to member's activities for period ending on effective date of return

(1) Every return must contain the following information for the period specified in **clause 8**:

- (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; and
- (b) a description of each gift received by the member 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); and
- (c) details of any gift or donation of money in the sum of \$500 or more (such amount being inclusive of any goods or services tax and of a series of gifts or donations made by or on behalf of any one person or group) and the name of the donor; and
- (d) a description of all debts of more than \$500 that were owing by the member that were discharged or paid (in whole or in part) by any other person and the names of each of those persons; and
- (e) a description of each payment received by the member for activities in which the member is involved (other than the remuneration, allowances, and expenses paid to that person under the Remuneration Authority Act 1977 pursuant to clause 6 in Schedule 7 of the Local

Government Act 2002), including the source of each payment.

- (2) The information referred to in **subclause (1)(a)** does not have to be included in the return if the travel costs or accommodation costs (as the case may be) were paid by the following or any combination of the following:
 - (a) the member:
 - (b) the member's spouse or domestic partner:
 - (c) any parent, child, step-child, foster-child, or grandchild of the member:
 - (d) the Crown or any local authority:
 - (e) any State government or international parliamentary organisation or international equivalent of a local authority, if the primary purpose of the travel was in connection with the member's official duties.
- (3) For the purposes of **subclause (1)(b)**, gift—
 - (a) includes hospitality and donations in cash or kind other than donations made to cover expenses in an electoral campaign:
 - (b) excludes gifts received from family members (that is, any of the following: the member's spouse or domestic partner or any parent, child, step-child, foster-child, or grandchild of the member).

8 Period covered by return

- (1) The period for which the information specified in **clause 7** must be provided is the 12-month period ending on the effective date of the return.
- (2) However,—
 - (a) a member does not have to include any information specified in **clause 7** that has been included in a previous return:
 - (b) if the member is elected at an election and the member was not also a member of a local authority immediately before that election and the return is the first return required to be made by the member after that election, the period for which the information specified in **clause 7** must be provided is the period beginning on election day for that election and ending on the effective date of that return:
 - (c) if an initial return is required to be made by a member elected at an election who was also a member of a local authority immediately before that election, the period for which the information specified in **clause 7** must be provided is the period beginning on 1 February in

the year in which the election is held and ending on the effective date of that return:

- (d) if the previous return that the member had a duty to make was an initial return, the period for which the information specified in **clause 7** must be provided is the period beginning on the day after the effective date of that initial return and ending on the effective date of the return that must be made.
- (3) For the purposes of **subclause (2)(b)** the first return required to be made by a member may be either an initial return or an annual return.

9 Actual value, amount, or extent not required

Nothing in this schedule requires the disclosure of the actual value, amount, or extent of any asset, payment, interest, gift, contribution, or debt.

10 Form of returns

Returns must be in a form specifically prescribed by the registrar.

Register of Pecuniary Interests of Members of Local Authorities

11 Register of Pecuniary Interests of Members of Local Authorities

A register called the Register of Pecuniary Interests of Members of Local Authorities is established.

12 Office of registrar

The office of registrar is held by the Local Government Commission or a person appointed by the Local Government Commission, with the agreement of the Minister, to act as registrar.

13 Functions of registrar

The functions of the registrar are to—

- (a) compile and maintain the register; and
- (b) provide advice and guidance to members in connection with their obligations under this schedule.

14 Registrar must supply returns to Auditor-General

The registrar must supply to the Auditor-General a copy of every return within 21 days of the date by which all returns are due.

15 Auditor-General's review and inquiry

- (1) The Auditor-General will review the returns provided under **clause 14** as soon as is reasonably practicable.
- (2) The Auditor-General may inquire, either on request or on the Auditor-General's own initiative, into any issue as to whether—
 - (a) any member has complied, or is complying, with his or her obligations under this schedule; or
 - (b) the registrar has complied, or is complying, with his or her obligations under this schedule.
- (3) The Auditor-General may, after he or she has completed an inquiry under **subclause (2)**, report to the registrar and the House the findings of the inquiry and any other matter that the Auditor-General considers it desirable to report on.

Publication of summary of returns

16 Registrar must publish summary of returns of current members of local authorities

- (1) The registrar must, within 90 days of the due date for transmitting any initial returns that are required to be made following a general election, publish on a website and in booklet form a summary containing a fair and accurate description of the information contained in those initial returns that has been transmitted by persons who, at the date of publication, are members of local authorities.
- (2) The registrar must, within 90 days of the due date for transmitting annual returns, publish on a website and in booklet form a summary containing a fair and accurate description of the information contained in those annual returns that has been transmitted by persons who, at the date of publication, are members of local authorities.
- (3) The registrar must promptly provide a copy of the booklet to the Minister.
- (4) The registrar must ensure that a summary containing a fair and accurate description of information contained in all returns is—
 - (a) maintained on a website;
 - (b) available for inspection by any person at Parliament Buildings in Wellington on every working day between the hours of 10 am and 4 pm;
 - (c) available for inspection at the premises of every local authority on every working day between the hours of 10 am and 4 pm.
- (5) A person may take a copy of any part of the summary referred to in **subclauses (4)(b) and (c)** on the payment of a fee (if any) specified by the House or local authority.

17 Minister must present copy of booklet to House

The Minister must, as soon as practicable after receipt of a copy of a booklet under **clause 16(3)**, present a copy of the booklet to the House.

Miscellaneous provisions

18 Information about register

- (1) The registrar must disclose any information relating to the register that the Auditor-General requires for the purposes of reviewing and inquiring into the returns under **clause 15**.
- (2) Subject to **subclause (1)**, all returns and information held by the registrar relating to an individual member (other than information that is required to be disclosed under **clause 16**) are confidential until,—
 - (a) in a case where the member's office is the subject of an election, when the members elected at the next election come into office;
 - (b) in a case where provision is made by any enactment to fill a vacancy by appointment, when the member's successor comes into office.
- (3) All returns and information held by the registrar or by the Auditor-General relating to individual members are to be destroyed at the times provided in **subclause (2)**, except in respect of the return of any individual member that the Auditor-General requires to be retained for the purposes of a review or inquiry under **clause 15**.

19 Responsibilities of members and registrar

- (1) It is the responsibility of each member to ensure that he or she fulfils the obligations imposed on the member by this schedule.
- (2) The registrar is not required to—
 - (a) notify any member of that member's failure to transmit a return by the due date or of any error or omission in that member's return; or
 - (b) obtain any return from a member.

Explanatory note

There is a need to more effectively regulate the influence of wealth in local body election campaigns and to promote transparency and accountability in relation to electoral financing by introducing caps on donations, limiting the use of anonymous donations, and regulating third party spending.

This Supplementary Order Paper strengthens the law governing electoral financing in relation to local body elections, in order to—

- (a) maintain public and political confidence in the administration of local body elections; and
- (b) promote participation by the public in the democratic process; and
- (c) prevent the undue influence of wealth on electoral outcomes; and
- (d) provide greater transparency and accountability on the part of candidates and other persons engaged in election activities in order to minimise the perception of corruption; and
- (e) ensure that the controls on the conduct of local body election campaigns—
 - (i) are effective; and
 - (ii) are clear; and
 - (iii) can be efficiently administered, complied with, and enforced.

The other key provisions in this Supplementary Order Paper provide for—

- a cap on donations by any person or group of \$5,000;
 - anonymous donations not to exceed \$500;
 - a ban on overseas donations;
 - regulation of third party spending;
 - a pecuniary interests register for members of local authorities.
-