

Members of Parliament (Pecuniary Interests) Bill

Government Bill

Explanatory note

General policy statement

The purpose of the Bill is to require members of Parliament to disclose their pecuniary interests and, by doing so, to highlight and avoid possible conflicts of interest between members' public duties and private interests. The Bill will strengthen public trust and confidence in the parliamentary process by promoting greater transparency, openness, and accountability.

The Bill establishes a Register of Pecuniary Interests of Members of Parliament. It is a register of interests, not a register of wealth. The main features of the Bill are as follows:

- disclosure of 12 categories of interests (the nature of an interest is to be registered, *not* the actual monetary value):
- disclosure of interests following legislation coming into force, following election, and annually thereafter:
- a register to be annually collated, and a summary published, and presented to the House:
- sanctions for non-compliance include publicity and political pressure, and inquiry and report by the Controller and Auditor-General:
- the Clerk of the House of Representatives is to administer the register and provide guidance to members of Parliament.

Ministers have been required to declare their interests in an annual Register of Ministers' Interests and Assets since 1991, as set out in the Cabinet Manual. The establishment of a comparable regime for

members of Parliament will bring New Zealand into line with jurisdictions such as the United Kingdom, Australia, and Ireland.

The Bill supplements New Zealand's existing arrangements for disclosure of interests by members of Parliament. These include the current requirement that ad hoc declarations of interest be made by members of Parliament before they participate in House business, and that failure to disclose is contempt of the House (Standing Orders 165-167, 400).

The Bill deals with the registration of interests, not actual conflicts of interest. Sanction for an actual conflict of interest will continue to be dealt with under Standing Orders. Voluntary compliance with the registration requirements is expected, supplemented by publicity and political pressure. The Controller and Auditor-General will also have a role in compliance, by reviewing the compiled returns and having the power to conduct an inquiry into individual returns on the Auditor-General's own initiative or in response to a complaint.

Registration of interests: sequence of events

The regular cycle for completion and registration of returns is as follows:

On election

Initial returns must be made 30 days following polling day or, in the case of replacement list members, the date of notification of election, with returns to be lodged with the Registrar within 60 days of polling day or the date of notification of election. This applies to members of Parliament elected at a general election, a by-election, and as replacement list members.

Example:

elected	27 July 02
initial return as at	26 August 02 (effective date of return)
return to be lodged by	25 September 02
publication date	24 December 02

Annual returns (following election)

Members must annually update their entries as at 31 January unless the initial return was made after 31 July in the previous year.

Example:

annual return as at	31 January 05 (effective date of return)
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return to be lodged by 28 February 05
publication date 29 May 05

The Bill strikes a balance between greater transparency and avoiding undue intrusion into members' privacy. The interests of a member's family are not required to be disclosed. The Bill provides for a summary of members' interests to be published and available for public inspection. The publication will be a public register under the Second Schedule of the Privacy Act 1993. The Privacy Commissioner will be able to investigate to ensure that administration of the register complies with the information privacy and public register privacy principles.

Clause by clause analysis

Clause 1 is the Title clause.

Part 1

Preliminary provisions and duty to make returns

Subpart 1—Preliminary provisions

Clause 2 provides that the Bill comes into force on **1 October 2004**.

Clause 3 sets out the purpose of the Bill, which is to promote greater transparency, openness, and accountability in the Parliamentary process, and, in particular, to—

- require members of Parliament to disclose their pecuniary interests; and
- establish a register of pecuniary interests; and
- provide for the presentation of a summary of returns to the House of Representatives and the publication of that summary.

Clause 4 provides that the Bill binds the Crown.

Clause 5 defines a number of terms used in the Bill. The most important of these terms is **effective date of the return**, which is explained in *clauses 6 and 7* of the Bill.

Subpart 2—Duty to make returns

Clause 6 requires a member of Parliament to make an initial return as at 30 days after polling day or, if the person is declared to be elected as a consequence of a vacancy in a list seat, as at 30 days after the date of that declaration.

Clause 7 requires a member of Parliament to make an annual return in each year as at 31 January unless that member is required to make an initial return with an effective date after 31 July in the previous year.

Clause 8 sets out the information that must be included in each return about each member of Parliament's interests, property, employers, and significant debtors and creditors, as at the effective date of the return.

Clause 9 provides that a member of Parliament does not have to disclose an interest in a registered superannuation scheme.

Clause 10 provides that a member of Parliament does not have to disclose any debt that is owed by a member of the member's family.

Clause 11 sets out the information that each return must contain concerning travel undertaken, debts incurred, and payments and gifts received by the member of Parliament over the period covered by the return.

Clause 12 sets out the period for which the information described in *clause 11* must be supplied.

Clause 13 provides that nothing in the Bill requires the disclosure of the actual value, amount, or extent of any asset, payment, interest, gift, contribution, or debt.

Clause 14 sets out rules about the form of returns.

Part 2

Register established, inquiries, and miscellaneous provisions

Register of pecuniary interests

Clause 15 establishes the register called the Register of Pecuniary Interests of Members of Parliament.

Office of Registrar

Clause 16 provides that the office of Registrar is held by the Clerk of the House of Representatives.

Functions of Registrar

Clause 17 sets out the functions of the Registrar. Those functions are to compile and maintain the register, and to provide advice and

guidance to members of Parliament in connection with their obligations under the Bill.

Review of returns

Clause 18 requires the Registrar to supply copies of returns to the Auditor-General.

Clause 19 requires the Auditor-General to review the returns received and enables the Auditor-General to conduct an inquiry as to whether a member of Parliament or the Registrar has complied, or is complying, with his or her obligations under the Bill.

Clause 20 applies certain provisions of the Public Audit Act 2001 to the exercise and performance of the Auditor-General's functions, powers, and duties under the Bill.

Publication

Clause 21 requires the Registrar to—

- publish a summary of newly received initial and annual returns on a website and in booklet form; and
- promptly provide a copy of the booklet to the Speaker of the House of Representatives; and
- ensure that a summary of all returns transmitted after the commencement of the Bill is maintained on a website and can be inspected and copied by members of the public.

Clause 22 requires the Speaker of the House of Representatives to present a copy of the booklet to the House of Representatives as soon as practicable after receipt of a copy of the booklet.

Administration of register

Clause 23 provides criteria for the Registrar to determine whether to release information relating to the register (other than information required to be made available under *clause 21*).

Clause 24 deals with the respective responsibilities of members of Parliament and the Registrar.

Protection of privileges of Parliament

Clause 25 provides that nothing in the Bill limits the privileges of House of Representatives.

Rules

Clause 26 empowers the House of Representatives to make rules for the purposes of the Bill.

Consequential amendments

Clause 27 amends the Clerk of the House of Representatives Act 1988 by adding references to the functions of the Clerk under the Bill.

Clause 28 amends the Second Schedule of the Privacy Act 1993 by requiring the summary of information required by *clause 21* to be treated as a public register under that Act.

Hon Dr Michael Cullen

Members of Parliament (Pecuniary Interests) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Members of Parliament (Pecuniary Interests) Act **2003**.

Part 1 5
Preliminary provisions and duty to make returns

Subpart 1—Preliminary provisions

2 Commencement

This Act comes into force on **1 October 2004**.

3 Purpose 10

The purpose of this Act is to promote greater transparency, openness, and accountability in the Parliamentary process, and, in particular,—

- (a) to require members of Parliament to disclose their pecuniary interests; and 15
- (b) to establish a register of pecuniary interests; and
- (c) to provide for presentation of a summary of returns to the House of Representatives and the publication of that summary.

4 Act binds the Crown 20

This Act binds the Crown.

5 Interpretation

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

Auditor-General means the Controller and Auditor-General appointed under section 7 of the Public Audit Act 2001; and includes every employee of the Controller and Auditor-General or every appointed auditor who has been authorised by the Controller and Auditor-General under that Act to act on his or her behalf under this Act 25

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 30

company means—

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

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Crown entity has the same meaning as in section 2(1) of the Public Finance Act 1989

effective date of the return means the date as at which the return is effective as required by **section 6(1)** or **section 7(1)** (as the case may be)

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employed—

- (a) means employed under a contract of service; but
- (b) does not include holding the position of a member of Parliament or any other position for which the person in question would not be qualified unless he or she had been elected a member of Parliament (for example, the position of Minister of the Crown, Parliamentary Under-Secretary, Leader of the Opposition, or Whip)

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general election means the election that takes place after the dissolution or expiration of Parliament

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Government funding means funding from any 1 or more of the following:

- (a) the Crown;
- (b) any Crown entity;
- (c) any State enterprise

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member of Parliament means a member of the House of Representatives who is elected from time to time in accordance with the provisions of the Electoral Act 1993

polling day, in relation to any election, means the day appointed in the writ for that election for the polling to take place if a poll is required

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register means the Register of Pecuniary Interests of Members of Parliament established by **section 15**

Registrar means the Clerk of the House of Representatives appointed under the Clerk of the House of Representatives Act 1988; and includes any person authorised under that Act to carry out any function, duty, or power of the Clerk of the House of Representatives

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- Speaker of the House of Representatives** includes the Deputy Speaker of the House of Representatives
- State enterprise** has the same meaning as in section 2 of the State-Owned Enterprises Act 1986
- 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. 5
- (2) Every amount specified in this Act is inclusive of goods and services tax (if any). 10
- (3) Every reference in this Act 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.
- Subpart 2—Duty to make returns 15
- 6 Duty to make initial return**
- (1) Every member of Parliament must make an initial return as at the day that is 30 days after,—
- (a) in the case of a person who is elected at an election, the polling day for the election at which that member is elected; and 20
- (b) in the case of a person who is declared to be elected as a member of Parliament under section 137 of the Electoral Act 1993, the date that the person’s election is notified in the *Gazette*. 25
- (2) An initial return must be transmitted by the member to the Registrar within 30 days of the effective date of the return or, if the member is declared to be elected as a result of an election petition, within 30 days of the decision of the Court.
- 7 Duty to make annual return** 30
- (1) Every member of Parliament must make an annual return in each year as at 31 January.
- (2) However, a return does not have to be made under **subsection (1)** for a particular year if the effective date of a return made by the member under **section 6** is after 31 July in the previous year. 35

- (3) The annual return must be transmitted by the member to the Registrar by 28 February in each year in which an annual return must be made.

- 8 Contents of return relating to member's position as at effective date of return** 5
- (1) Every return must contain the following information as at the effective date of the return:
- (a) the name of each company of which the member of Parliament 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 10
 - (b) the name of every other company or business entity in which the member of Parliament has an interest and a description of the main business activities of each of those companies or entities; and 15
 - (c) if the member of Parliament 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 of Parliament has a beneficial interest; and 20
 - (e) if the member of Parliament has an interest in an organisation or trust that receives 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; and 25
 - (f) the location of each parcel of real property of which the member of Parliament is a registered proprietor of the fee simple, leasehold, or stratum estate (whether or not any other person is also a registered proprietor of that estate); and 30
 - (g) the name of each debtor of the member of Parliament who owes more than \$5,000 to the member and a description of each of the debts that are owed to the member by those debtors; and 35
 - (h) the name of each creditor of the member of Parliament to whom the member owes more than \$5,000 and a description of each of the debts that are owed by the member to those creditors.

- (2) Despite **subsection (1)(f)**, if a member of Parliament does not have any beneficial interest in the fee simple, leasehold, or stratum estate in respect of which he or she is a registered proprietor, **subsection (1)(f)** does not apply in respect of that real property. 5
- (3) The description of a debt under **subsections (1)(g) and (h)** 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 CI 6 of the Income Tax Act 1994 as at the effective date of the return. 10
- 9 Interests in registered superannuation schemes do not have to be disclosed**
- A member of Parliament does not have to disclose any interest in a registered superannuation scheme (including any scheme referred to in section 19H of the Government Superannuation Fund Act 1956). 15
- 10 Debts owed by family members do not have to be disclosed**
- A member of Parliament does not have to disclose the name of any debtor of the member and a description of the debt owed by that debtor if the debtor is a member of the member's family. 20
- 11 Contents of return relating to member's activities for period ending on effective date of return** 25
- (1) Every return must contain the following information for the period specified in **section 12**:
- (a) for each country (other than New Zealand) that the member of Parliament travelled to,—
- (i) the name of the country; and 30
- (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 35

- (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 of Parliament 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 5
 - (c) a description of all debts of more than \$500 that were owing by the member of Parliament that were discharged or paid (in whole or in part) by any other person and the names of each of those persons; and 10
 - (d) a description of each payment received by the member of Parliament for activities in which the member is involved (other than the salary and allowances paid to that person under the Civil List Act 1979 and the Remuneration Authority Act 1977). 15
- (2) The information referred to in **subsection (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 in full by the following or any combination of the following: 20
- (a) the member;
 - (b) a member of the member's family;
 - (c) the Crown;
 - (d) any State government, if the primary purpose of the travel was in connection with an official Parliamentary visit. 25

12 Period covered by return

- (1) The period for which the information specified in **section 11** must be provided is the 12-month period ending on the effective date of the return. 30
- (2) However,—
- (a) a member of Parliament does not have to include any information specified in **section 11** that has been included in a previous return;
 - (b) if an initial return is required to be made by a member of Parliament elected at a general election who was not also a member of Parliament immediately before that general election, the period for which the information specified in **section 11** must be provided is the period 35

- beginning on polling 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 of Parliament elected at a general election who was also a member of Parliament immediately before that general election, the period for which the information specified in **section 11** must be provided is the period beginning on 1 February in the year in which the general election is held and ending on the effective date of that return: 5
- (d) if an initial return is required to be made by a member of Parliament elected at a by-election or as a consequence of a declaration under section 137 of the Electoral Act 1993, the period for which the information specified in **section 11** must be provided is,— 10
- (i) in the case of a member elected at a by-election, the period beginning on the polling day for that election and ending on the effective date of that return: 15
- (ii) in the case of a member declared to be elected under section 137 of the Electoral Act 1993, the period beginning on the date that the person's election is notified in the *Gazette* and ending on the effective date of that return: 20
- (e) if the previous return that the member of Parliament had a duty to make was an initial return, the period for which the information specified in **section 11** 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. 25
- 13 Actual value, amount, or extent not required** 30
Nothing in this Act requires the disclosure of the actual value, amount, or extent of any asset, payment, interest, gift, contribution, or debt.
- 14 Form of returns**
- (1) Returns must be either— 35
- (a) in the form prescribed by the rules under **section 26**; or
- (b) in a form approved by the Registrar.
- (2) If the Registrar approves a form of return, the Registrar must publish that form in the *Gazette* promptly.

Part 2
**Register established, inquiries, and
miscellaneous provisions**

Register of pecuniary interests

- 15 Register established** 5
- (1) A register called the Register of Pecuniary Interests of Members of Parliament is established.
- (2) The register comprises all returns transmitted by members of Parliament under this Act.
- Office of Registrar* 10
- 16 Office of Registrar**
- The office of Registrar is held by the Clerk of the House of Representatives.
- Functions of Registrar* 15
- 17 Functions of Registrar**
- The functions of the Registrar are to—
- (a) compile and maintain the register; and
- (b) provide advice and guidance to members of Parliament in connection with their obligations under this Act.
- Review of returns* 20
- 18 Registrar must supply returns to Auditor-General**
- The Registrar must supply to the Auditor-General a copy of every return within 14 days of the date on which that return is received by the Registrar.
- 19 Auditor-General's review and inquiry** 25
- (1) The Auditor-General must review the returns provided under **section 18** 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— 30
- (a) any member of Parliament has complied, or is complying, with his or her obligations under this Act; or
- (b) the Registrar has complied, or is complying, with his or her obligations under this Act.

- (3) The Auditor-General must, as soon as practicable after he or she has completed an inquiry under **subsection (2)**, report to the Speaker of the House of Representatives or a committee of the House of Representatives the findings of the inquiry and any other matter that the Auditor-General considers it desirable to report on. 5

20 Application of Public Audit Act 2001

The following provisions of the Public Audit Act 2001 apply, with any necessary modifications, to the exercise and performance of the Auditor-General's functions, duties, and powers under this Act: 10

(a) sections 9, 23, 39, 41, and 42:

(b) Parts 4 and 5.

Publication

21 Registrar must publish summary of returns of current members of Parliament 15

- (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 have been transmitted by persons who, at the date of publication, are members of Parliament. 20
- (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 have been transmitted by persons who, at the date of publication, are members of Parliament. 25
- (3) The Registrar must promptly provide a copy of the booklet to the Speaker of the House of Representatives. 30
- (4) The Registrar must ensure that a summary containing a fair and accurate description of information contained in all returns transmitted after the commencement of this Act is— 35
- (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.

- (5) A person may take a copy of any part of the summary referred to in **subsection 4(b)** on the payment of a fee (if any) specified in the rules made under **section 26**.
- 22 Speaker of House of Representatives must present copy of booklet to House of Representatives** 5
The Speaker of the House of Representatives must, as soon as practicable after receipt of a copy of a booklet under **section 21(3)**, present a copy of the booklet to the House of Representatives.
- Administration of register* 10
- 23 Disclosure of other information about register by Registrar**
- (1) This section applies to the disclosure of information by the Registrar that relates to the register and its administration (other than information that is required to be disclosed under **section 21**). 15
- (2) The Registrar may disclose such information to which this section applies as the Registrar considers appropriate to disclose in the exercise or performance of his or her functions, duties, or powers. 20
- (3) Before disclosing any information, the Registrar must consider—
(a) the public interest; and
(b) the interests described in sections 6, 7, and 9(2) of the Official Information Act 1982. 25
- (4) This section does not affect an individual's entitlement to request access to information under information privacy principle 6 of the Privacy Act 1993.
- 24 Responsibilities of members and Registrar**
- (1) It is the responsibility of each member of Parliament to ensure that he or she fulfills the obligations imposed on the member by this Act. 30
- (2) The Registrar is not required to—
(a) notify any member of Parliament 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 35
(b) obtain any return from a member of Parliament.

Protection of privileges of Parliament

25 Privileges of House of Representatives

Nothing in this Act limits the privileges of the House of Representatives.

Rules

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26 Rules

(1) The House of Representatives may make rules for all or any of the following purposes:

(a) prescribing the fees to be paid for copying the whole or a part of a summary of the register: 10

(b) prescribing forms of returns:

(c) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

(2) All rules made under this section are regulations for the purposes of the Acts and Regulations Publication Act 1989 (but not for the purposes of the Regulations (Disallowance) Act 1989). 15

Compare: 1975 No 9 s 15

Consequential amendments

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27 Clerk of the House of Representatives Act 1988 amended

Section 3 of the Clerk of the House of Representatives Act 1988 is amended by adding the following paragraphs:

“(f) compile and maintain the Register of Pecuniary Interests of Members of Parliament provided for in the Members of Parliament (Pecuniary Interests) Act 2003: 25

“(g) provide advice and guidance to members of Parliament in connection with their obligations under that Act.”

28 Privacy Act 1993 amended

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Part I of the Second Schedule of the Privacy Act 1993 is amended by inserting, after the item relating to the Local Electoral Act 2001, the following item:

Members of Parliament (Pecuniary Interests) Act 2003 **section 21**