



NEW ZEALAND  
LAW SOCIETY

NZLS EST 1869

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# OFFICIAL INFORMATION (PARLIAMENTARY UNDER- SECRETARIES) AMENDMENT BILL

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*7/12/2015*

## **Submission on the Official Information (Parliamentary Under-Secretaries) Amendment Bill**

### **1 Summary**

- 1.1 The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the Official Information (Parliamentary Under-Secretaries) Amendment Bill (Bill).
- 1.2 The Law Society supports the proposed Bill, which will apply the existing provisions of the Official Information Act 1982 (Act) to Parliamentary Under-Secretaries in the same way as Ministers, when acting in that official capacity.
- 1.3 It is appropriate that Parliamentary Under-Secretaries will be subject to the Act, in the same way that a Minister is subject to the Act. Parliamentary Under-Secretaries are part of the executive arm of government, have a warrant and are appointed “... *in relation to such Ministerial office or offices as are specified in that behalf in the warrant*”.<sup>1</sup>
- 1.4 The Law Society proposes one minor drafting change to the Bill, to make the new definition of “*Minister of the Crown*” inclusive: “*Minister of the Crown includes a Parliamentary Under-Secretary.*” This change is consistent with the purpose of the Bill (to apply the Act to Parliamentary Under-Secretaries) and removes the extra references to Ministers and Associate Ministers from the definition (avoiding any unintended question on whether the term “*Minister*” already includes an “*Associate Minister*”). This point is discussed at paragraph 4.1 below.

### **2 The purpose of the Official Information Act and the proposed effect of the Bill**

- 2.1 The Act has the purpose of (among other matters) increasing the availability of official information to the people of New Zealand in order to promote the accountability of Ministers of the Crown and officials.<sup>2</sup> The Act generally enables members of the public to request information and provides grounds for when official information can be withheld.<sup>3</sup>
- 2.2 The Bill applies the Act to Parliamentary Under-Secretaries by including a new definition of “*Minister of the Crown*” at section 2 of the Act – see clause 4 of the Bill: “*Minister of the Crown means a Minister, Associate Minister, or Parliamentary Under-Secretary*”.
- 2.3 The effect of the Bill will be that Parliamentary Under-Secretaries are treated the same as Ministers under the Act, so that members of the public will be able to request official information held by an Parliamentary Under-Secretary in his or her official capacity.<sup>4</sup>

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<sup>1</sup> Section 8(1), Constitution Act 1986

<sup>2</sup> Section 4 (a)(ii) of the Act

<sup>3</sup> See Parts 1 and 2 of the Act

<sup>4</sup> See definition of “*official information*” in section 2 of the Act: “*official information means any information held by...a Minister of the Crown in his official capacity...*”.

Parliamentary Under-Secretaries will also be able to rely on the same grounds as Ministers, when considering whether or not the official information can be withheld.<sup>5</sup>

### 3 The role of Parliamentary Under-Secretaries

- 3.1 Despite comments made in the first reading speeches,<sup>6</sup> Parliamentary Under-Secretaries do have an executive government role. The Cabinet Manual describes Parliamentary Under-Secretaries as part of the executive government and notes that “*as members of the Executive, Parliamentary Under-Secretaries are bound by the principle of collective responsibility*”.<sup>7</sup>
- 3.2 Under the Constitution Act 1986, Parliamentary Under-Secretaries are appointed by the Governor-General to “*exercise or perform under the direction of the Minister concerned such of the functions, duties, and powers of the Minister of the Crown for the time being holding that office as may from time to time be assigned to the Parliamentary Under-Secretary by that Minister*”.<sup>8</sup> In other words, Parliamentary Under-Secretaries will carry out Ministerial responsibilities.
- 3.3 Parliamentary Under-Secretaries are already grouped together with, and treated as, Ministers in certain situations. For example, a Parliamentary Under-Secretary:
- (a) is required to swear an oath before acting as such (as does a Minister);<sup>9</sup>
  - (b) cannot be appointed to the Parliamentary Service Commission (like a Minister of the Crown);<sup>10</sup> and
  - (c) receives the same additional salary rate as a Minister, if not re-standing or re-elected.<sup>11</sup>

### 4 Minor drafting change regarding “Associate Ministers”

- 4.1 In addition to Parliamentary Under-Secretaries, the new definition of “*Minister of the Crown*” also expressly refers to [an] “*Associate Minister*”. The Law Society has assumed that the “*Associate Minister*” reference was not intended to change the existing Act (which applies to Ministers of the Crown). It is not clear why the term “*Associate Minister*” has

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<sup>5</sup> See Part 2 of the Act

<sup>6</sup> See, for example, first reading speech of Mark Mitchell MP (14 October 2015) 709 NZPD 7247: “*This bill is totally unnecessary. It is going to erode the current distinction that is drawn between the executive, which is subject to the Official Information Act, and other members.*”

<sup>7</sup> Cabinet Manual (2008) at paragraphs 2.45-2.48

<sup>8</sup> Section 9(1) Constitution Act 1986

<sup>9</sup> Section 20 of the Oaths and Declarations Act 1957

<sup>10</sup> Section 15 of the Parliamentary Service Act 2000

<sup>11</sup> Section 11 of the Members of Parliament (Remuneration and Services) Act 2013

been added, when the focus of the Bill is to apply the Act to Parliamentary Under-Secretaries.

- 4.2 On that basis, the Law Society proposes a minor drafting change to the Bill, to make the new definition of “*Minister of the Crown*” inclusive: “*Minister of the Crown includes a Parliamentary Under-Secretary.*” A similar definition has been used previously in the Members of Parliament (Accommodation Services for Members and Travel Services for Family Members and Former Prime Ministers) Determination 2014: “*Minister includes a Parliamentary Under-Secretary*”.<sup>12</sup> This change will avoid an unintended side debate on whether or not the Associate Minister role is included in the term “*Minister*”. In the Law Society’s view, the expression “*Minister of the Crown*” is already well-understood to include the Prime Minister, Ministers, Associate Ministers, Acting Ministers, Ministers outside Cabinet and Ministers of State.<sup>13</sup>
- 4.3 Finally, for the avoidance of doubt, the Law Society notes the distinction between Parliamentary Under-Secretaries and Parliamentary Private Secretaries. As noted in the Cabinet Manual, “*Parliamentary Private Secretaries are members of Parliament who may be appointed by the Prime Minister to assist Ministers. Parliamentary Private Secretaries are not part of the Executive. They have no executive responsibilities and no policy, financial, statutory, or operational authority.*”<sup>14</sup> This distinction explains why the Bill does not propose to apply the Act to Parliamentary Private Secretaries.

## 5 Conclusion

- 5.1 The Law Society wishes to appear in support of this submission.



Chris Moore  
**President**  
 7 December 2015

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<sup>12</sup> Clause 6 of the Members of Parliament (Accommodation Services for Members and Travel Services for Family Members and Former Prime Ministers) Determination 2014

<sup>13</sup> Cabinet Manual (2008), chapter 2.

<sup>14</sup> Cabinet Manual (2008) at paragraph 2.49