

LOCAL GOVERNMENT LOCAL GOVERNMENT BILL – THE HIGHLIGHTS

The Bill implementing the Government's Better Local Government reforms was introduced into Parliament yesterday. The Local Government Act 2002 Amendment Bill is available at <http://www.legislation.govt.nz/bill/government/2012/0027/latest/contents.html>.

The Bill implements the first four points of the Government's eight point programme. We go through each of those four points below, advising which provisions in the Bill are relevant, and commenting on some of the issues that caught our attention.

The significance of this reform should not be underestimated. It has dramatic implications for the legal basis for local authority activity and the extent of Governmental control. We will be commenting further in coming weeks and will be ready to assist with Select Committee submissions.

POINT 1 - REFOCUS THE PURPOSE OF LOCAL GOVERNMENT

The new purpose statement for local government is to be found in clause 7, which amends section 10 of the Act (see page 5 of the Bill). In place of the current reference to promoting the social, economic, environmental and cultural well-being of communities, the Bill defines the second "limb" of local government's purpose as being "to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses".

Notably, the words "cost-effective" replace the phrase "least possible cost" that were in the Government's March 2012 release on Better Local Government. Also, "public services" have become "local public services".

The Bill includes a definition for "good quality", which applies to each of local infrastructure, local public services, and regulatory functions. "Good quality" means efficient, effective, and appropriate to present and anticipate future circumstances. Otherwise, there is little guidance on the possible meaning of the new purpose statement.

There are also numerous consequential changes to the various sections in the Act that refer to the four well-beings.

POINT 2 - INTRODUCE FISCAL RESPONSIBILITY REQUIREMENTS

A new regulation-making power has been added to section 259 of the Act by clause 22 (see pages 26 to 27 of the Bill). It allows for regulations that will prescribe "parameters or benchmarks for assessing whether a local authority is prudently managing its revenues, expenses, assets, liabilities, investments, and general financial dealings".

The Bill makes clear that the regulations can express those parameters and benchmarks in a range of ways, and that different parameters and benchmarks can be set for different classes of local authority.

Two examples of benchmarks and parameters in the Bill are:

- a local authority's debt in a financial year must not exceed a fixed sum per resident; and
- a local authority's expenditure in a financial year must not increase by more than the ratio of population growth multiplied by the rate of increase of the Consumers Price Index (CPI).

As noted in our previous FYI, the reference to CPI is troubling given that local authorities' costs, especially land and infrastructure costs, continue to increase more quickly than many costs measured through the CPI. The Local Government Cost Index, developed by LGNZ, would be a more relevant measure. In addition, population growth is not necessarily the best measure of increased demand for local authorities' services, as many costs are not dependent on population growth (eg meeting drinking water standards and wastewater

treatment plant standards). Local authorities understand that household growth is a significant infrastructure cost driver, and that household growth increases at a different rate to population growth, and can occur even in districts experiencing no population growth.

The Minister can recommend regulations only if they have been developed in consultation with LGNZ.

POINT 3 - STRENGTHEN COUNCIL GOVERNANCE PROVISIONS

Employment and remuneration policy

Clause 24 of the Bill introduces a power for a local authority to adopt policies on employee staffing levels and the remuneration of employees (see pages 27 to 30 of the Bill).

Local authorities will have to publish information on employee numbers and remuneration in annual reports. Salaries are to be disclosed in bands, with the first band being \$0 - \$60,000, and the remaining bands being in \$20,000 lots starting from \$60,000 - \$80,000. Bands can be merged where there are less than five employees in the band, so as to protect individuals' privacy.

The Bill includes a new provision allowing the Remuneration Authority to approve rules created by a local authority for reimbursing members' expenses.

Mayoral powers

The additional mayoral powers are set out in clause 16 (see page 9 of the Bill). As expected, the powers include appointing the Deputy Mayor and Committee Chairpersons, as well as establishing committees. The Mayor is also tasked with leading the development of plans, policies and budgets. These changes roll out nationally the increased powers given to Auckland's Mayor under the 2009 Auckland legislation. However, unlike in that legislation there is no statutory entitlement to a budget to support the Mayor's enhanced role, thereby leaving it to a local authority's discretion whether the Mayor should have additional financial support or separately staffed mayoral office.

Assistance and intervention framework

The Bill inserts a new part into the Act, which brings together the powers previously spread out in Part 10 and Schedule 15 (see pages 10 to 26 of the Bill). As expected, the Bill provides for Crown reviewers, observers, and managers, in addition to the usual commissioners.

The point of interest here is the trigger for the Minister to intervene. The Bill refers to it being when there is a "significant problem". Both

"significant" and "problem" are defined (see page 11 of the Bill), with "problem" meaning "a matter or circumstance relating to the management or governance of the local authority that detracts from, or is likely to detract from, its ability to give effect to the purpose of local government within its district or region". This gives the Minister a very wide discretion to intervene. A "problem" will also include the consequences of a state of emergency, and a failure to meet the financial parameters and benchmarks set through regulations.

POINT 4 - STREAMLINE COUNCIL REORGANISATION PROCEDURES

Schedule 3 of the Act, setting out the provisions that apply to reorganisation proposals, is to be entirely replaced under the Bill (see pages 32 to 63 of the Bill).

One of the most interesting new provisions in the Bill, which was not signalled in the Government's March 2012 release on Better Local Government, is the introduction of a Ministerial power to direct the Local Government Commission on the priority and timing of reorganisation proposals (see page 8 of the Bill). Through a Gazette notice, the Minister can specify the timeframes within which the Commission must deal with matters, and which reorganisation applications are to be given higher priority. This is unprecedented in allowing central government to signal its support, or lack of support, for particular proposals.

The new Schedule 3 proposes to alter the threshold for seeking a reorganisation proposal, essentially making it easier. The Commission will simply need to be satisfied that an application has "significant community support" for it to proceed. In this context, this will mean "support from a large proportion of the community, or of the leaders of the community".

Before developing a final reorganisation proposal, the Commission will again need to satisfy itself that there is "significant community support". However, in this context, the bar has been set higher – there will need to be "substantial support from a large proportion of the community or the leaders of the community". The definition allows a proposal to go ahead if it has sufficient support from leaders of the community, even if a large proportion of the people in the community do not support it.

As expected, the Bill provides that a poll will be held only if it is demanded through a petition signed by at least 10% of electors in the affected area. It seems petitions will still need to be signed by hand, rather than allowing for electronic petitions. However, the Bill does accept that a petition can be made up of a number of separately gathered petitions, provided they all clearly seek that the poll be held.

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