



REPORT 1
(1215/52/IM)

SUBMISSION ON THE LOCAL GOVERNMENT ACT 2002
AMENDMENT BILL

1. Purpose of report

This report outlines a draft Wellington City Council submission on the Local Government Act 2002 Amendment Bill, for the Committee's approval. A copy of the draft submission is **attached** as Appendix 1 to this report.

2. Executive summary

The Government introduced the Local Government Act 2002 Amendment Bill (the Bill) into the House on 30 May 2012, and plans to take this through the legislative process to enable the Bill to be passed into legislation by the end of 2012.

The Bill, if enacted as currently drafted, could have a profound effect on local government and Wellington city.

The Regulatory Impact Statement, which accompanies the Bill, states that the Department of Internal Affairs considers there is limited evidence to inform the development of these proposals and the timeframe has restricted its ability to assess the impacts of the Bill. This presents as a high risk for a significant sector of the community. There is a likelihood both that the 'problems' with local government as articulated may not exist and that the changes proposed will not address them:

*"There is limited evidence to inform the development of these proposals, and the timeframe within which the proposals have been developed has restricted the ability to assess multiple options. As a result, the problem analysis and option assessments of specific proposals rely on assumptions that are not, or only partially, tested."*¹

The Bill represents a marked shift in the constitutional arrangements for local government. The self-determination granted to communities under the Local Government Act (LGA 2002) is to be severely constrained by the change to the purpose statement, and also by the ability of central government to impose limits and constraints on local authorities' financial dealings through the proposed regulation-making power.

¹ Regulatory Impact Statement "Better Local Government" 16 March 2012.

The LGA 2002 was reviewed only two years ago, introducing a number of reforms aimed at similar ‘problems’ to those articulated in this Bill. Many of those new provisions are just coming into effect (e.g. financial strategies, including rates targets and limits, as part of Long Term Plans about to be approved). We are not aware of any analysis of the impact of these changes.

Key concerns with the Bill, which are addressed in the **attached** draft submission, are outlined in section 5 of this report.

3. Recommendations

Officers recommend that the Strategy and Policy Committee:

1. *Receive the information.*
2. *Agree to the **attached** submission to the Local Government and Environment Select Committee*

4. Background

In March 2012, Government released a discussion document entitled *Better Local Government*. The document foreshadowed changes the government wanted to see within the local government sector in terms of its purpose and fiscal responsibilities. In addition the government signalled that it wanted to make it easier to reorganise council structures and boundaries and to intervene when councils are perceived to have a “problem” in the view of the Minister.

To implement this, the Government introduced the Local Government Act 2002 Amendment Bill on 30 May 2012, which has been referred to the Local Government and Environment Select Committee. At the Bill’s first reading, the Minister told Parliament the Bill was the first phase of the government's reforms which would force local authorities to operate more efficiently and effectively by doing "things that only they can do".

The government has said that it wants the Bill passed and enacted no later than November 2012. The Select Committee has announced that submissions are due to close on 26 July 2012.

A significant number of changes have been proposed in the Bill with important implications for local government. They include:

- Removing the currently broad focused “four well-beings” with three principles and refocusing the purpose of local government with a new purpose statement
- introducing fiscal responsibility requirements
- strengthening council governance provisions, including empowering mayors with new executive powers
- streamlining council reorganisation procedures.

Phase two of the changes set out in *Better Local Government* will be covered in a second Local Government Reform Bill 2013. This is expected to include:

- recommendations from the Local Government Efficiency Taskforce, whose membership was announced on 7 June 2012
- developing a framework for central/local government regulatory roles
- investigating the efficiency of local government infrastructure provision
- reviewing the use of development contributions.

This report outlines the Council's submission on the Bill and provides comment on the key proposals. It seeks SPC's approval of the attached draft submission on the Bill and agreement to refer the submission to the Local Government and Environment Select Committee.

5. Discussion

This section highlights some key concerns that officers have with the provisions of the Bill. More detailed commentary is provided in the attached draft submission.

5.1 *New Purpose Statement*

Under the Bill, the four well-beings are replaced with councils being required to "play a broad role in meeting the current and future needs of communities for *good quality*:"

- local infrastructure
- local public services, and
- performance of regulatory functions".

Good quality is defined as: efficient; effective; and appropriate to present and anticipated future circumstances, and the Bill requires that services be delivered "in a way that is **most cost effective for households and businesses**", although this is not specifically defined in the Bill.

The change in purpose statement is extremely significant. The Bill's new purpose statement moves in the opposite direction to the way much of the modern world, including the current conservative-led government in the United Kingdom, is heading in terms of the role of local government in promoting cities as economic engine-rooms of the twenty-first century.

The Bill does not just narrow the range of the Council activity; it changes the basis of empowerment, reintroducing the concept of ultra vires, and making councils constantly vulnerable to judicial review. The use of imprecise terms in the purpose statement like "local infrastructure" and "local public services" means that there will be uncertainty about what functions local authorities can lawfully undertake.

Despite previous media comments from the Minister of Local Government and the Prime Minister, which indicated that most current activities would remain lawful (no current services were ruled out), the Bill's new provisions are intended to encompass something less than the range of activities councils currently engage in. This is a clear inference from the explanatory note to the

Bill and from the reality that such a drastic change to the expression of the legislation must have been intended to reduce the scope of the local authority activity:

- There is a question, for example, about whether the provision of social housing, in which Wellington City is the second largest provider behind central government, will be legal should the Bill proceed into law. Can it be a public service, when the private sector provides rental housing? Can it be a 'local' service when central government provides state housing? This has previously been a decision for the Wellington community to make – now it seems that central government (and/or the courts) will determine what is permitted.
- These questions may also extend to whether the activities that have helped transform Wellington city over the last 20 years – our major events like the Sevens, WOW and the International Festival of the Arts; our tourism promotion investments that have underpinned Wellington becoming the number one domestic tourism destination in New Zealand; and our investments in the arts and culture infrastructure of the City that led Lonely Planet to describe Wellington as the Coolest Little Capital in the World.

The purpose of meeting needs for infrastructure, services and regulatory functions "in a way that is **most** cost-effective for households and businesses" imposes an absolute standard. As councils' powers are derived from the performance of this purpose in their locality, anything which can be shown to fail to meet this standard will be illegal. This is an inefficient approach to promoting financial restraint, given the high risk of litigation to test the meaning of cost-effective across the broad range of activities undertaken by local government, and given the signalled intention to introduce some form of rates capping as a means of financial constraint:

- We question whether the significant investment the City made in the Moa Point treatment plant, generally regarded as a sound and far-sighted investment by the Wellington community, would meet this new test. There may be more 'cost-effective' solutions 'for households and businesses' as the courts define that term.

5.2 Risk of increased litigation

The proposed purpose statement is likely to lead to an increase in litigation. It will provide a basis for those who are unhappy with the Council's decisions to challenge their lawfulness. They will be able to challenge not just whether an activity can be undertaken, but also whether it is being met in a way that is most cost-effective for households and businesses. In interpreting the new section 10(b), the courts will be mindful of the fact that Parliament has seen fit to amend the purpose statement. They will look to give a meaning to it that is different to the current section 10(b), and this will be a narrower meaning than is given to the current section 10(b).

5.3 Financial Prudence Provision - Rates Capping

Clause 22 of the Bill proposes amendments to s259 that the Governor-General may make Regulations on the recommendation of the Minister prescribing

“parameters or benchmarks for assessing whether a local authority is prudently managing its revenues, expenses, assets, liabilities, investments, and general financial dealings”.

These can include:

- i. reference to fixed terms (for example, the debt of a local authority in a financial year, generally, should not exceed a fixed sum per resident):
- ii. the use of ratios, factors, or other relative terms (for example, the expenditure of a local authority in a financial year, generally, should not increase by more than the ratio of population growth multiplied by the rate of increase of the Consumers Price Index):
- iii. reference to circumstances, statistics, or other publicly available information, whether only concerning local authorities and their districts and regions or otherwise.

These benchmarks can be set for different types of local authorities and can only be developed in consultation with Local Government New Zealand.

The proposal to introduce benchmarks by regulation, which will be tied to a new capacity for central government intervention, give rise to likely rates capping. An example of rates limits of CPI (plus growth) is provided in the Bill. A review of international experience with rates capping stated the following:

The international experience with restrictions on local government revenue raising indicate that they are effective in terms of the single objective of constraining rates increases, but the evidence is compelling that they fail to result in an optimal mix of local services and rates. On balance, rates capping in the jurisdictions studied has led to core expenditure being cut to the bone. Large infrastructure backlogs have been created²

These amendments could introduce rate-capping creating a number of issues for local government. Alongside the Crown Assistance and Intervention provisions in the Bill, these amendments may result in councils continually negotiating their financial strategy with the Minister in an effort to provide assurance they are acting prudently. This shifts the focus of accountability from rate payers to the Minister.

We support the use of benchmarks when they are being used to inform and guide local decision making but not where it is intended to place limits within which a council must act.

The nature of long term council infrastructure, differences in population growth, and funding differences in revenue and financing policies results in different investment strategies being required with different local authorities. Any use of benchmarking would need to recognise these differences in order for the results to be meaningful. The consequence of strict financial limits could be an increase in deferred maintenance, a slow down in asset renewals or an

² Rates Capping: a study of the international literature and experience, NZIER, June 2009.

increase in revenue raised in fees for services. A slow down in asset renewals transfers a current liability to future generations, negating intergenerational equity.

While financial prudence is critical, these restraints on long term infrastructure or earthquake remediation seem unwieldy and as a minimum core infrastructure funding and provisions for matters of “significance” must be ring-fenced or be considered alongside a proposed definition. A number of strategies have been implemented in this area arising from the last change in the Act. There has been no time allowed for the transparent “financial strategy” or the pre-election financial reporting to be implemented or reviewed.

5.4 What role for consultation?

Are the consultation provisions of the Act now required? The LGA 2002 was a comprehensive reform: it simplified the basis for the local authority empowerment into three short provisions (sections 10, 11 and 12) and directed councils to their communities for their mandate rather than to prescriptive legislation.

This new competence came at the price of extensive decision-making and accountability requirements (in Part 6) by which communities were provided with the means to influence council direction, and councils were obliged to obtain a mandate. Principal among these requirements are the long term plan provisions and the general decision-making and consultation requirements in sections 76 to 82. Does the new purpose statement render consultation less meaningful when what local government can do, and how it should do it, is now prescribed?

5.5 Reorganisation provisions

The Bill removes the current automatic right of electors to vote on their choice of local government arrangements. While there is evidence to suggest that the current system does not sufficiently facilitate the potential for ‘amalgamation’, there is a risk that the Bill’s provision may swing the balance too far the other way. If electors in the Wellington region wish to have a vote on amalgamation by signing a petition, they face having to collect up to 1,000 signatures a day, every day, for the 40 day minimum period signalled in the Bill.

The Local Government Commission, in determining whether or not to assess a proposal, and subsequently whether or not to move to implement it, will consider whether the proposal has ‘significant community support’. The Bill defines this as ‘support from a large proportion of the community or of the *leaders of the community*’, without defining what or who this is. This provision lacks clarity on who or what constitute ‘community leaders’, and how many community leaders constitute ‘significant support’.

Finally, a possible result of attempts to ease the system for amalgamations is that councils could come under constant threat of amalgamation, with the distraction and resource commitments attendant with. The Bill does place a three year ‘freeze’ on regions being subject to reorganisation proposals, if a subsequent proposal is sufficiently similar to one already considered. However, in the case of the Wellington region there are literally dozens of governance

options that could be considered, giving considerable scope for proposals to constantly emerge (now that the threshold for introducing a proposal has been lowered). And should a proposal succeed, we would also consider that any new entity should be given sufficient time to bed down and prove itself. A 6 year 'freeze' would appear more sensible.

5.6 Crown assistance and intervention

This section of the Bill provides a tiered structure for intervention in any local authority.

The amended powers are firstly to *assist* a council. The Minister may:

- require a council to provide information
- appoint a Crown Reviewer or Crown Review Team to a council; and
- appoint a Crown Observer to a council.

In addition, the Minister has powers to *intervene* in the affairs of a council by:

- appointing a Crown Manager to a council
- appointing a Commissioner or a Commissioner and Deputy Commissioners for Disaster Recovery to a council; and
- calling a general election of a council.

These provisions raise questions about where the balance lies in the accountability of local government between ratepayers and central government. This framework enables the Minister to step into the process much earlier and if the Minister is not satisfied, s/he can more easily escalate the level of intervention.

The activation of this section relies on the definition of a *problem* or a *significant problem* and the advice Ministers are receiving on these issues. Both definitions are subjective, have no indication of scale and there is a lack of clarity about the process, including from whom the Minister may receive advice on when a "problem", as defined in the Bill, has occurred.

A 'problem' includes anything that detracts or which may detract from any local authority giving affect to the purpose of the Act or the consequences of a state of emergency. However it also includes the failure to demonstrate prudent management in the terms of any of the parameters or benchmarks set under s 259 (1) (dc).

Arguably the most significant of the intervention powers is the Minister's ability to appoint a Crown Manager. The Minister will determine the Crown Manager's terms of reference, enabling the Crown Manager to direct a local authority on any problem the Minister identifies. The Minister will have an extremely broad discretion to identify any matters s/he considers to be problems and to instruct a Crown Manager in how they are to be fixed.

5.7 Enabling a council to determine employment and remuneration policies

The Bill introduces section enabling a local authority to adopt an employment and remuneration policy, which can include employee staffing levels and the

remuneration of employees. In setting such a policy, elected members would need to be mindful of any shifts in responsibilities, such as liability for the Health and Safety practices and policies of an organisation.

The Bill also requires a local authority to report on all employee salaries, setting out the number of staff paid up to \$60,000 and in \$20,000 bands above \$60,000. This proposal goes beyond the practice of central government and proposes different reporting standards in relation to remuneration and staff numbers from the public service, without any explanation of why different standards should apply to local government.

The guidelines issued by the Securities Commission recommend that governance bodies should adopt a remuneration policy, particularly in relation to key executives and ensuring that this is fair and reasonable in a competitive market for the skills, knowledge and experience required by the entity. It also states that publicly owned entities should disclose their remuneration policy in annual reports.

The reporting standards in the public sector comply with the provisions of s211 of the Companies Act 1993 which requires reporting of staff salaries exceeding \$100,000 per annum, and bands of \$10,000.

We would support proposals consistent with wider public sector advice and practice.

5.8 The unknown impacts of Phase II reforms on the provisions of this Bill

As outlined in the background of this report, the government has also signalled a second phase of reforms which will be covered in another Local Government Reform Bill 2013. This is expected to include:

- recommendations from the Local Government Efficiency Taskforce
- developing a framework for central/local government regulatory roles
- investigating the efficiency of local government infrastructure provision
- reviewing the use of development contributions

These reforms may impact on the provisions contained in this Bill, including the role of local government, particularly in respect of regulation, planning and consultation and the provision of infrastructure.

6. Conclusion

The Local Government Act 2002 Amendment Bill introduces a wide range of provisions which will impact significantly on how local authorities operate in New Zealand, and the influence that local communities can have on what activities and services are provided.

The attached draft submission sets out these issues for submission to the Local Government and Environment Select Committee.

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APPENDIX 1



Submission to: **Local Government and Environment
Select Committee**

Bill: **Local Government Act 2002
Amendment Bill**

From: **Wellington City Council**

Date: **July 2012**

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1. Introduction

In 2010/2011, 72% of residents surveyed believe Wellington City Council services offer value for money and 77% of residents surveyed are satisfied or very satisfied with the Council's performance.

Cities are the engine room of the economy.
At the 2006 Census, 86 percent of the population was living in an urban area. This includes 72 percent living in 16 main urban areas (population of 30,000 or more).

In the UK, the Government is recognising that it needs to unlock the growth potential of cities to stimulate the economy.

Firms and workers are increasingly free to locate where they want, so 21st century cities will succeed by being places where people want to live.

Unlocking Growth in Cities. HM Government

Wellington City Council (WCC) welcomes the opportunity to comment on the Local Government Act 2002 Amendment Bill (the Bill).

As a Council we recognise the need to manage prudently while continuing to meet the needs of our community both now and in the future. The annual planning processes provide a strong lever for communities to signal their priorities for spending and enable the democratic processes of local government to work.

Through this we are able to maintain high levels of service to our communities, ensure that city communities understand the financial pressures, and manage rate levels so that services now and required into the future are delivered in the most efficient and affordable way. This continues to be reflected in the high residents' satisfaction rates we receive.

Cities as engines of growth

It needs to be recognised that cities are the engines of growth and they are critical to our economic recovery. New Zealand cities and their wider economic areas account for the majority of our population and our jobs.

In the UK, the government is taking steps to help cities drive forward growth through creating Local Enterprise Partnerships; putting greater financial powers in the hands of local authorities through business rate retention and new borrowing powers; creating Enterprise Zones with the power to use Tax Increment Financing; providing new funding to create 'super connected cities'; and investing in urban areas through Regional Growth Funds.

In New Zealand we need to also take steps to unlock the growth potential of our cities and have cities that demonstrate strong, visible and accountable leadership and effective decision-making structures.

WCC recognises that these amendments are being introduced to clarify the role of local government and to ensure that services are delivered effectively and efficiently. We do not think that they will assist in unlocking the economic potential of our cities.

Lack of evidence for change

Our submission raises a number of issues and provides our comments where we consider that the Bill is unclear, creates uncertainty or potentially increases the risk of litigation for local government.

The Regulatory Impact Statement states that there is little evidence to inform the development of these proposals and the timeframe has restricted the ability to assess multiple options.

This presents itself as high risk for a significant sector of the community. There is a high likelihood that the changes will not achieve the purpose that the Government is aiming to achieve.

2. Executive Summary

Existing democratic processes provide effective checks and balances on Council activities.

As stated in our last submission on the amendment to this Act in June 2010, we believe strongly that it is elected councils, working closely with their communities, who are best placed to decide the range and scope of services that they should deliver.

The annual planning process provides an environment for open disclosure and discussion between elected councillors and the communities they represent. The impact of rating decisions provides very direct feedback to councillors and staff to ensure that prudent decisions are made and local authorities act within their mandate.

WCC continues to share the Government's commitment to improving transparency and accountability however this needs to also recognise the accountability mechanisms already in place for ratepayers.

There is some concern with provisions within the Bill that allow the Minister to overrule the existing democratic processes or for the Commission to act on a reorganisation proposal without directly taking account of the communities input through a mandatory poll.

There is a question, for example, about whether the provision of social housing, in which Wellington City is the second largest provider behind central government, will be legal should the Bill proceed into law.

We question whether the significant investment the City made in the Mōa Point treatment plant, generally regarded as a sound and far-sighted investment by the Wellington community, would meet this new test.

This has previously been a decision for the Wellington community to make – now it seems that central government (and/or the courts) will determine what is permitted.

3. Overall Comments

New Purpose Statement for Local Government

The Bill introduces a new purpose for local authorities.

The stated intention is to provide more direction to local authorities and a tighter framework within which they operate. We accept that the wording takes account of the broad role councils take, the current and future needs of communities, and the broad scope of public services.

WCC is concerned that in doing so this does not take account of the existing democratic processes and consultation which set community priorities. It may raise expectations in some areas of a reduction in services at a time when the majority of the community are satisfied or very satisfied with service levels and also state that the services they receive are value for money.

It also does not recognise that the majority of local authority expenditure is committed to core services and there is not a significant component of discretionary expenditure.

The changed definition may lead to ambiguity and legal challenges of councils in relation to the services it provides. It requires services to be delivered in a “most cost effective” manner which is a test which cannot be proven.

When taken with the other provisions within the Bill, it may lead to complaints to the Minister who may then require the local authority to justify its position. In this case the result may be increased compliance for both central and local government.

There will always be a range of services that could be undertaken by central or local government or another party, and there will always be views on whether a service is most cost effective or not. The change in definition provides a legal basis for these services to be challenged rather than set by community consultation.

Financial Prudence Requirements

The Bill provides powers for the Minister to set under regulation, benchmarks for Council performance.

These are to assess “*whether a local authority is prudently managing its revenues, expenses, assets, liabilities, investments, and general financial dealings.*”

We support that these will only be developed in consultation with Local Government New Zealand and we note that there can be different measures for different types of local authorities.

We also support these benchmarks being used to inform and guide local decision-making rather than placing limits within which a council must act. The nature of long term council infrastructure, differences in population growth, and the age of assets results in different investment strategies being required for different local authorities. Benchmarking and the use of this information must recognise these differences.

There are a number of strategies that have been implemented in this area arising from the last change in the Act. There has been no time allowed for the transparent “financial strategy” or the pre-election financial reporting to be implemented or reviewed. No benchmarks should be set before these changes are bedded down.

New Mechanisms for Council Governance

WCC has no issues with accountability and scrutiny for its decisionmaking. It is already subject to public scrutiny by ratepayers.

The major concern with the provisions as set out in the accountability framework within the Bill is that the basis for intervention is loosely defined only in that a problem must exist in the reasonable opinion of the Minister. The definition of “problem” is broad and the Minister could be expected to act should a member of the public assert that there is a problem. Both

International experience with restrictions on local government revenue raising indicates that they are effective in terms of the single objective of constraining rates increases, but the evidence is compelling that they fail to result in an optimal mix of local services and rates. *Rates Capping: A Study of the international Literature and Experience. LGNZ 2009*

central and local government risks increased compliance costs as a result of the proposed changes.

It would be useful if there was some significance threshold that a problem must meet before a Minister can intervene, such as a major transaction level set to avoid the sector and Ministers being caught in unnecessary compliance activities.

Local Government Reorganisation

The changes introduced in the Bill covering the reorganisation of local government are wide reaching. WCC has some concern about the current drafting in the Bill.

The Bill enables any body with an interest in local government to present a proposal for reorganisation to the Commission. A proposal just needs to show that it has significant community support, which can be from leaders of the community and not from the community itself.

The proposal must promote good local government, and must also drive efficiencies, productivity and simplified planning systems. It does not set out other criteria which should also be equally considered in any proposal.

WCC is concerned that the Commission can proceed with a proposal without a poll being undertaken, unless sufficient ratepayers petition for a poll to be undertaken. These ratepayers have a minimum of 40 working days to petition the Commission for a poll to be taken on the proposal. Given the significance of the potential changes likely under the proposals this seems to be a hasty process.

The requirement for ratepayers to petition for a poll rather than it being a requirement for a poll to be undertaken seems also to place a lot of power in the hands of the Commission.

The Bill does not place the same requirement for justifying the level of support on those putting forward the proposal.

We recommend that the conditions for petitioning a poll are changed to ensure that there is a reasonable opportunity for the community to have input on these proposals.

4. Submission

WCC's submission is presented in two parts: this report; a table setting out our comments and recommendations in detail as **Appendix A**.

APPENDIX A

Appendix A: Wellington City Council's position on the Local Government ACT 2002 Amendment Bill



Theme	Council Position	Commentary
<p>Role of Local Authorities</p> <p>Replace section 3(d) with:</p> <p>(d) provides for local authorities to play a broad role in meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions.</p>	<p>Oppose</p>	<p>We do not support the change.</p> <p>The proposed purpose statement may require councils to prove that they meet the new definition in relation to a wide range of core services areas.</p> <p>The definition narrows the view of the role of local government, particularly in relation to the role of cities in the 21st century where “cities as a whole” are acting to leverage their competitive position to attract skills, talent and business and grow the economy.</p> <p>The proposal for change does not take into consideration the accountability relationship that councils have to their ratepayers or the level of engagement that councils have with their communities. The planning processes councils must follow, for example in relation to their Long Term Plans which involve rigorous public participation, or the electoral process which allows the public to scrutinise a council’s performance ensure that core services are delivered that meet community needs.</p> <p>The risk is that the new definition may increase legal challenge and the likelihood of judicial review of a council’s activities.</p> <p>When considered with the other powers provided in the Bill, there may also be an increase in the likelihood of a Minister seeking ongoing assurance from a council that its activities are within the scope of these purposes which may prove to be an unnecessary distraction to a council’s core work.</p>
<p>Replace section 10(b) with:</p> <p>(b) 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.”</p> <p>In section 10, insert as subsection (2):</p>	<p>Support with changes</p>	<p>We recommend that the current purpose remains with no change in purpose. In the event of this not being agreed by the Select Committee then the following changes are recommended.</p> <p>We recommend that the word “most” be removed from clause 10 (b) and services be delivered in a way that is “<i>cost effective</i>”</p>

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Theme	Council Position	Commentary
<p>(2) In this Act, good-quality, in relation to local infrastructure, local public services, and performance of regulatory functions, means infrastructure, services, and performance that are</p> <p>(a) efficient; and</p> <p>(b) effective; and</p> <p>(c) appropriate to present and anticipated future circumstances.</p>		<p><i>for households and businesses</i>". A test of "most cost effective" cannot be substantiated. Unless a service is shown to be "most cost effective" then a council will be found to be acting <i>ultra vires</i>.</p> <p>We would recommend that the current wording of section 10 (b) is retained.</p> <p><i>to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.</i></p>
<p>36A Remuneration and employment policy</p> <p>(1) A local authority may adopt a policy that sets out the policies of the local authority in relation to</p> <p>(a) employee staffing levels; and</p> <p>(b) the remuneration of employees.</p> <p>(2) A local authority must review a policy adopted under this clause at intervals of no more than 3 years."</p>	Oppose	<p>The proposals go beyond the executive powers and practice of central government where Ministers do not set remuneration levels, and beyond best practice governance guidelines where governance bodies tend to only set policy in relation to key executives.</p> <p>The Securities Commissions Corporate Governance In New Zealand Principles And Guidelines³ state that</p> <ul style="list-style-type: none"> • The board should have a clear policy for setting remuneration of executives (including executive directors) and non-executive directors at levels that are fair and reasonable in a competitive market for the skills, knowledge and experience required by the entity. • Publicly owned entities should disclose their remuneration policy in annual reports. <p>We would recommend that if this clause is included it should reflect similar wording to the guidelines issued by the Securities Commission.</p>
<p>32A Employee staffing levels and remuneration</p> <p>(1) An annual report must include a report on the number of employees who were employed by the local authority</p>	Support with changes	<p>The Bill proposes different reporting standards in relation to remuneration and staff numbers from the public service.</p> <p>Public sector reporting is generally based on section 211 of the Companies Act 1993. This requires that every annual report for</p>

³ Corporate Governance In New Zealand Principles And Guidelines A Handbook for Directors, Executives and Advisers. Securities Commission Published 16 March 2004 Reprinted February 2011.

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<p>(a) on the last day of the financial year to which the report relates; and (b) on the last day of the immediately preceding financial year.</p> <p>(2) For each financial year, the report must state (a) the number of full-time employees; and (b) the full-time equivalent number of all other employees; and (c) the number of employees receiving total annual remuneration of less than \$60,000; and (d) the number of employees receiving total annual remuneration of \$60,000 or more, expressed in bands of \$20,000.</p>		<p>a company must be in writing and be dated and, subject to subsection (3), must</p> <p><i>(g) state the number of employees or former employees of the company, not being directors of the company, who, during the accounting period, received remuneration and any other benefits in their capacity as employees, the value of which was or exceeded \$100,000 per annum, and must state the number of such employees or former employees in brackets of \$10,000;</i> The reporting should comply with public sector reporting standards.</p>
<p>Crown Assistance and intervention</p> <p>This relates to Part 10 of the Act and Subparts 1 and 2 covering the Powers of Ministers to act in relation to local authorities.</p>	Oppose	
<p>problem, in relation to a local authority, (a) means (i) 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; or (ii) the consequences of a state of emergency (within the meaning of section 4 of the Civil Defence Emergency Management Act 2002) affecting, or recently affecting, the local authority's district or region; and (b) includes (i) a failure by the local authority to demonstrate prudent management of its revenues, expenses, assets, liabilities, investments, or general financial dealings in terms of any parameters or benchmarks prescribed by regulations made under section 259(1)(dc); and (ii) a potential problem within the meaning of paragraph (a)(i) or subparagraph (i) of this paragraph; And (iii) to avoid doubt, 2 or more problems within the meaning of paragraph (a) or subparagraph (i) or (ii) of this paragraph</p> <p>“significant, in relation to a problem of a local authority, means that the problem will have actual or probable adverse consequences for residents and ratepayers within the district or region of the local authority.</p>	Oppose	

APPENDIX A

Theme	Council Position	Commentary
<p>Financial Prudence Requirements</p> <p>22 Section 259 amended (Regulations)</p> <p>(1) After 259(1)(db), insert:(dc) prescribing parameters or benchmarks for assessing whether a local authority is prudently managing its revenues, expenses, assets, liabilities, investments, and general financial dealings:”.</p> <p>(2) After section 259(2), insert:</p> <p>(3) Regulations made under subsection (1)(dc) may—</p> <p>(a) prescribe parameters or benchmarks in any manner, including by</p> <p>(i) reference to fixed terms (for example, the debt of a local authority in a financial year, generally, should not exceed a fixed sum per resident):</p> <p>(ii) the use of ratios, factors, or other relative terms (for example, the expenditure of a local authority in a financial year, generally, should not increase by more than the ratio of population growth multiplied by the rate of increase of the Consumers Price Index):</p> <p>(iii) reference to circumstances, statistics, or other publicly available information, whether only concerning local authorities and their districts and regions or otherwise; and</p> <p>(b) prescribe parameters or benchmarks in a way that differentiates between different types or classes of local authority (for example, regional councils, territorial authorities, and local authorities with a population, assets, or an average income of its population over or under a specified figure).</p> <p>(4) The Minister may recommend the making of regulations under subsection (1)(dc) only if the content of the recommendation has been developed in consultation with the New Zealand Local Government Association Incorporated.</p>	<p>Oppose these changes</p> <p>Changes recommended if the Select Committee proceeds</p>	<p>We do not support these changes.</p> <p>We recommend that in the event of the select Committee proceeding with this part of the Bill, the following amendments are made</p> <ul style="list-style-type: none"> • deletion of examples of the types of benchmarks • provision of any regulations prescribing benchmarks should not take effect until 1 July 2014.
<p>Local Government Reorganisation</p> <p>Schedule 3</p> <p>1 (a) significant community support, (a) in relation to a reorganisation application and a proposal developed under clause 12, means—</p> <p>(i) support from a large proportion of the community, or of the leaders of the community, for reform of the current local government arrangements;</p> <p>and</p> <p>(ii) substantial support within that group for the changes proposed in the</p>	<p>Support with changes</p> <p>Oppose</p>	<p>We recommend that the wording “or of the leaders of the community” be removed from this clause.</p> <p>As there is no definition of “leaders of the community”, this wording risks political interference in this process and does not provide any assurance that these leaders have an actual mandate to act for the whole community.</p>

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<p>reorganisation application; and</p> <p>(b) in relation to a final proposal developed under clause 18, means substantial support from a large proportion of the community or the leaders of the community for the changes proposed in the final proposal.</p>		
<p>Schedule 3</p> <p>21 Petition to require poll</p> <p>(1) If a final proposal has been issued under clause 18(1)(a) or (b), affected electors may demand a poll to determine whether or not the final proposal is to proceed and become a reorganisation scheme.</p> <p>(2) A poll may be demanded under subclause (1) by a petition of 10% or more of electors enrolled as eligible to vote in the affected area.</p> <p>(3) The Commission must, in the public notice of a final proposal under clause 19(1)(a), advise electors of—</p> <p>(a) the opportunity to demand a poll under this clause; and</p> <p>(b) the requirements relating to the submission of a petition under this clause; and</p> <p>(c) the date by which a petition must be received by the Commission; and</p> <p>(d) the affected area.</p> <p>(4) The date referred to in subclause (3)(c) must be determined by the Commission, but must not be earlier than 40 working days after the first publication of the notice under clause 19(1)(a).</p>	<p>Support with changes</p>	<p>We recommend changes in this wording.</p> <p>We recommend that if a final proposal has been issued under clause 18(1)(a) or (b), there should be reasonable opportunity for the community to demand a poll be taken to ensure that there is a majority of community support. This could be either requiring</p> <ul style="list-style-type: none"> • a proposal must not proceed without a poll being completed. • a lower threshold than 10% of electors for a petition for a poll, or • longer timeframe than a minimum of 40 working days required to petition for a poll.