

Local Government reform – its here but what does it mean?

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The new Labour Alliance Coalition has been quick to move in implementing its priorities, such as its “credit card” promises. Local government reform has been no exception. The Government is currently in the middle of an ambitious programme of legislative reform that, if it proceeds according to plan, will have the three “tablets” of local government legislation, - the Local Elections and Polls Act, the Rating Powers Act and the Local Government Act - rewritten before the end of its first term.

Given the policy and parliamentary resources required to undertake such a comprehensive review it is reasonable to ask why local government is being so favoured when other, and possibly more urgent, legislative reviews such as the review of the Health Act 1956 continue to struggle for resources. Given that barely ten years ago the local government was subject to a transformation on a par with the abolition of the provinces in the 19th Century, the question as to what might be on the Government’s mind seems fair. Can we expect a re-negotiation of New Zealand’s basic governance relationships, in which the relative roles of central and local government are adjusted, or should we expect something a lot less “constitutional”, such as a technical exercise to “tidy-up” a legislative framework well past its “used by date”?

While the timetable is ambitious, with the review of the Local Government Act 1974 to be completed before the general election in 2002, the other reviews are much closer to completion. The new Local Government Electoral Bill has already been reported back to the House at the time of writing and will likely be law by the time the journal is published. The review of the Rating Powers Act 1988 (the Funding Powers Review) should result in a new bill before the house in June/July this year, to take effect on 1 July 2002. Both reviews would appear to sit at the “technical” end of the spectrum concerned with modernising existing powers, although the Local Government Electoral Bill does provide councils with the flexibility to introduce Single Transferable Voting and separate Maori seats elected from the Maori roll.

This brief paper looks at the Local Government Act 1974 review and attempts to identify the thinking lying behind it and any implications for public policy. The actual direction of the reform will not be publicly known until the release of the Discussion Paper in June. That document will outline the proposed changes and allow better assessment of their public policy implications. Given that the substantial policy work required to draft the Discussion Document, scheduled for the Local Central Government Forum on 14 June, is still confidential where do we find the clues to indicate the direction of the reform and what might be on the Government’s mind?

Party manifestos

Both Coalition partners went into the last election with manifestos that devoted considerable space to the future of local government, which contrasted markedly with the National Party which did not appear to have any formal policy. That by itself was

not surprising as since the 1989 reforms successive governments have taken a very functionalist view of local government – assuming that once the optimal framework for functions such as roading and water was achieved, local government reform would automatically follow.

The Alliance manifesto might be termed the more “bullish” of the two. Where the Labour manifesto talked “politely” of greater transparency, accountability and increasing citizen participation, themes with a pedigree dating back to the 1988/89 reforms, the Alliance went for the jugular and proclaimed its support for autonomy, locality and self-determination. For example:

It is the intention of the Alliance ... to restore this autonomy, minimise central government control over local government affairs and put the local back into local government. We believe that local government functions best when local democracy and community self-determination are given greatest possible scope.

Labour on the other hand included a commitment to:

In consultation with local government Labour will rewrite the Local Government Act to:

- *ensure that local government practices are transparent and accountable*
- *ensure that local government is accountable to its communities*
- *empower and encourage local government where, after consultation with its communities, it decides to take an active, coordinating and/or supportive role in (a wide range of) issues.*

Labour will enhance local democracy by encouraging increased participation of citizens in local government.

Although both policies indicate a strong commitment to the future of local government it is the Alliance’s focus on autonomy and self-determination that are salient to the basic governance issues that some within the local government sector would like the reform process to pursue. However it is in the area of local government’s powers that both policies come together and provide a particularly strong signal as to their immediate priorities – that is to introduce a “power of general competence” for local government.

The term a “power of general competence” (PGC) has been common in international local government discourse for more than a decade, yet as an approach to drafting legislation it is counter to, and a radical departure from, the way the Local Government Act 1974 is framed. The Local Government Act 1974 prescribes the powers and duties of local government, which means that local government can only undertake those activities specifically referred to in the statute. In contrast a power of general competence would enable the sector to do anything that was not outside its statement of purpose, was not specifically prohibited or proscribed and was not counter to the general law of the land.

The term acts as rallying call for different views of the world. For enthusiasts of local democracy a PGC is the holy grail, a symbolic “coming of age” whereby local authorities at last achieve the capacity to act as governments of their localities and have the freedom to respond to citizen’s needs like any other corporate citizen. In contrast, somewhat ironically, the champions of less government view PGC as

“creeping collectivism” providing an unhindered invitation for small-minded politicians and bureaucrats to meddle and construct empires funded by the taxes of their passive citizens no longer protected by the check and balance that prescription provides.¹

International experience would suggest that the hopes and fears of both schools are somewhat overstated. Most, if not all, Australian States have during the last decade amended their local government statutes to provide a power of general competence for their respective local government sectors. There appears to be little or no change in the activities they undertake. The statutory and legal boundaries on a PGC seem to have provided sufficient checks and balances to ensure that local authorities continued to act prudently and without the perverse incentives on behaviour that prescriptive legislation can create. The primary constraints on a PGC, in addition to the electoral and planning processes are:

- ◆ specified prohibitions to stop councils intervening in areas which are deemed to be of only national or state responsibility,
- ◆ human rights legislation including the rights to official information and other disclosures,
- ◆ existing legislation that provides a specific powers to specified agencies, such as the power of arrest to the Police,
- ◆ judicial review.

Statement of Policy Direction

The other primary source of clues to what might be in the Government’s mind has to be its own “Statement of Policy Direction for the Review of the Local Government Act 1974” (Directions), published in November 2000. The ostensible purpose of the Directions document is to outline the purpose and direction the government is intending to pursue with regard to the Local Government Act 1974 reform package. The document scopes the proposed review – outlines the Government’s rationale, the basic principles, suggests a purpose for local government and discusses the place of constraints on local government powers.

In addition to flagging the pre-election intentions of the Government to undertake a review the paper identifies the following issues that it is intended to resolve:

- the compliance costs imposed on local authorities as they try and work with the existing detailed and prescriptive legislation,
- the costs to parliament of regular amendments to the statute in response to the emergence of problems of interpretation,
- the needs for a more flexible statute to enable councils’ respond to our “increasingly diverse society”
- the fact that as a result of ad hoc amendment the existing statute no longer reflects a consistent and coherent view of local government and its purpose.²,

The above bullet points are probably the nearest thing to any kind of “problem statement” in the document. They don’t indicate a view that that the sector or its relationships are in any form of crisis. Nor do they suggest that the Government has plans for New Zealand that would be doomed to failure without a more empowered local government sector. It is perhaps fair to suggest that they paint a relatively modest range of issues that points us towards the “tidy-up” and “remove nuisance” end

of the spectrum, rather than a determined attempt to re-negotiate our governance relationships. This is further confirmed by a later statement in the paper that “fundamental constitutional reform ... is not proposed”³ The paper makes it very clear that there is no intention to initiate another round of local authority amalgamations.

A Statement of Results

There are four statements that spell out the results the Government wants to achieve from the review. These are a new statute which:

- reflects a coherent overall strategy on local government,
- will involve a move to a more broadly empowering legislative framework under which local authorities can meet the needs of their communities,
- involves the development of a partnership relationship between central and local government,
- clarifies local government’s relationship with the Treaty of Waitangi.

In many ways the words continue to beg the questions – such as what would a coherent strategy look like, and why should central government (or parliament) have a strategy for local government if indeed its role is to reflect local diversity?

The reference to “partnership relationships” provides one of this Government’s “points of difference” with its predecessors – an attempt to distance itself from what it has branded as the hard-edged, “efficiency at all costs” approach of the last decade or more. The partnership approach provides the link with international trends captured in buzz words that speak of ‘whole of government” and “joined up” services. The strategy recognises the frequently intractable nature of “community problems” that cannot be solved by any single agency working alone – the wicked issues. The Directions’ document is signaling a framework intended to encourage local government collaboration with other agencies with governance responsibilities at the community level, such as government departments, iwi and community organisations. While there appears to be a desire to create incentives for councils to act more collaboratively it is less clear whether the same incentives will be given to government departments and their agencies to work with local government. The recent establishment of District Health Boards was conspicuously lacking in reference to local government as having a role any different to that of any other interested agency.

The desire to clarify local government’s relationship to the treaty of Waitangi has been a long-standing issue and one in which the sector, iwi/Maori and the Government would all seek certainty. There is reasonable agreement that where a local authority is carrying out delegated functions, such as its resource management responsibilities, that Treaty responsibilities flow with the delegation⁴. However there is no unanimity around the question of where those responsibilities lie when councils are exercising their discretion and fulfilling the will of their communities. Such as when a group of citizens stand for elected office on the basis of a programme of policies and actions and then proceed to implement these once elected on the basis of a community mandate expressed through the (now proverbial) ballot box. Local government is not an extension of the Crown or parliament. It is a corporate body that operates under a framework determined by parliament like any other corporate body. As such it must work within national law and any other specific obligations written into its operating framework.

Key Policy Questions

In addition to outlining the purpose of the review the Directions document puts forward a number of key proposals and seeks public comment. These deal with the purpose of local government, the principles that might govern its operation, its powers and the nature of its accountability framework.

The Directions document proposes a new purpose statement for inclusion in the Act, a statement that will presumably replace the current S37K. This reads:

to enable local decision-making by and on behalf of citizens in their local communities to promote their social, economic and environmental well being in the present and for the future.

The proposed purpose would give effect to much of both the Alliance and Labour manifestos and meet many of the concerns that councils have raised over the last decade about the legitimacy of their social and economic interventions. Interestingly it appears as though the purpose would also apply to regional councils, although the Directions document does not explicitly address this. Providing regional councils with the ability to contribute to regional economic and social well being, for example through support for regional tourism strategies and regional facility provision, would solve a number of the problems created by the 1992 reforms to the Local Government Act 1974 which limited the role of regional councils. On the other hand care will be required to avoid duplication of services.

As well as a new purpose the Directions document signals an enhanced strategic (planning) capacity with a focus on community outcomes as a way of ensuring councils have the required information to intervene and contribute wisely in order to meet the proposed purpose. There is also discussion about the nature of an empowering provision and whether or not some functions should be defined as mandatory and others prohibited. Indeed it suggests a list of six areas that might require specific prohibitions, although on reflection many of the list, e.g. conducting interest and exchange rate policy, may turn out to be *non sequiturs*, in that local government lacks access to the policy levers to be able to influence those outcomes.

Surprisingly nowhere in the document is the phrase “power of general competence” mentioned. The section on powers is marked by an equal, if not greater, emphasis on how to prevent local government misusing its new powers than with the powers themselves.

Other Interested Groups

For a final reflection on where the reform initiative has come from and where it might be going we should note the existence of active interest groups with more than a passing interest in the capacity of local government and the tools at its disposal. *Local Government New Zealand* has been advocating for a review of the Act since its conference in Taupo in 1996, which suggested a power of general or local competence. More recently Auckland City Council took the initiative and commissioned constitutional lawyer Chen and Palmer to prepare a new local government act based on a power of general competence. A draft Bill of only 27 pages (the existing statute is 740 pages long) was prepared and forwarded to the new Government by the Council.

In speaking on the need for new legislation and the power of general competence in particular, Sir Geoffrey Palmer noted that while such a power “goes nowhere nearly as far as federalism but (that) it does provide some counterweight to the dominance of the

central power in New Zealand”.⁵ Calls for reform also came from other sectors including the Local Government Forum and its members, such as Federated Farmers, both of which were concerned at the propensity of councils to tax their members to subsidize the consumption of non-public goods by residents who happen to be the majority of voters.

The Scope of the review – is anything missing?

One can make at least two observations about the Directions document and other published material to date. One is the lack of any evidence that the review has taken into account changes in the national and international context in which governments operate. The other is the lack of any explicit policy principles sufficiently robust to guide the review through its various stages.

Apart from a brief reference to our increasingly diverse society the material so far fails to reference the reform within in any overall context of social change or meta-narrative. Clearly globalisation and multi-culturalism have changed international and national governance in a way that New Zealand cannot escape. Whether it is the creation of regional assemblies in the United Kingdom, devolution to the States in the USA or the re-creation of civil society in Eastern Europe, growing democratisation is clearly a feature modern societies and should perhaps be recognised in the New Zealand. Social and institutional change does not occur in a vacuum – understanding the context will at the least help with the identification of better and more sustainable policy solutions.

Similarly policy discourse needs to acknowledge its own inherent biases. Local government reform in 1988/89 was driven by a clear statement of principles that were robust enough to provide a level of consistency within the shape of the final legislation. Although the specific mix of principles also introduced an ongoing tension between autonomy and accountability, since reflected in local government and central government’s attitudes, their existence provided for a level of coherence that otherwise might have been lacking..

As the review proceeds local government is likely to be seeking assurance that the principles flagged in the party manifestos are being followed, particularly those of autonomy and self-determination. Some in the sector would be very delighted if the review acknowledge the importance of the principle of subsidiarity. Subsidiarity was promoted by the Royal Commission on Social Policy in 1988 as justification for arguing for institutional arrangements that place decision-making in the first instance at the level of government closest to the community, with higher order government undertaking only those functions that cannot be undertaken locally. So far there is no indication that the review will encompass such notions however.

Conclusion

In undertaking the review the Government has proverbially put its “money where its mouth is” in the sense that the process itself reflects the partnership principles flagged in the Directions document. In a major departure from traditional policy making practice the Government has brought local government officials and some elected members into the problem definition and options identification stage, with *Local Government New Zealand* contributing a formal view on Cabinet papers as though it was another Government department. As a gesture and indication of the

Government's future intentions it has been gratefully accepted and acknowledged by the sector.

The material so far available does not suggest that the Government has specific plans for local government to take on a larger range of programmes than those the sector currently provides. There is no evidence of a "major plan" and a specific denial that the reform will change in any way the constitutional framework. It does seem however that the Government wants to see a more vital and effective local government sector taking a more effective role in promoting better community outcomes.

Reference

¹ See Mathew Palmer's review of "Building the Constitution" in *Public Sector* Vol 23 No.4, December 2000 with its reference to the "heated debate on local government", for an example of the latter view.

² Department of Internal Affairs (2000) *Statement of Policy Direction for Review of Local Government Act 1974*, Dept. Internal Affairs, Wellington

³ *ibid* p.7.

⁴ Chen and Palmer (1999) *He Waka Taurua – Local Government and the Treaty, Local Government New Zealand*, Wellington.

⁵ Geoffrey Palmer, "A Radical thought about Local Government Reform in Auckland", speech to Waitakere City Council, 4 September 1999.