

Submission to  
The Local Government and Environment Select Committee

In the matter of  
The Local Government Act 2002 Amendment Bill  
From *Local Government New Zealand*

18 June 2010

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## Summary of Recommendations

### **Recommendation: Consultation**

- 1 That the Select Committee supports the proposed changes to consultation practice

### **Recommendation: Core Services**

- 1 That That Clause 5 'New Section 11A' is removed from the Bill or
- 2 That a clause for the avoidance of doubt is added to make it clear that core services are not mandatory services, unless separately defined as such.

### **Recommendation: Community Outcomes**

- 1 That the Select Committee approves the proposed re-definition of community outcomes
- 2 That transitional provisions are made to extend the 'life' of existing community outcomes until the 2012 LTP

### **Recommendation: Audit**

- 1 That the Select Committee add to Clause 13 a requirement that the Minister of Local Government undertake a full review of section 94 following the 2012 Long Term Plan.

### **Recommendation: Pre-Election Report (PER)**

That the Select Committee either:

- 1 delete Clause 16 or
- 2 require the PER to be subject to a trial involving a sample of councils and evaluated on completion before being introduced to the sector as a whole.

**Recommendation: Water**

- 1 That the Select Committee support Clauses 31 and 32

**Recommendation: National Performance Measures**

That the Select Committee:

- 1 delete Clauses 39 - 41 from the Bill, or
- 2 in the event of Clauses 39-41 being adopted require that the cost of developing the standards is funded by the Government, and
- 3 recommend that the standards be trialed in a sample of 10 councils and be subject to a full evaluation before considering whether to extend the requirement to the full sector.

**Recommendation: Community Board Funding**

- 1 That the Select Committee support Clause 45

**Recommendation: Infringements**

- 1 That the Select Committee prepare a supplementary order paper to the Local Government Act 2002 Amendment Bill (No 2) to expand the scope of section 259 for the purpose of enabling infringement offences for bylaw breaches.

**Recommendation Gang Insignia**

- 1 That the Select Committee supports the proposed bylaw making power for the prohibition of gang insignia

## 1. Introduction

It is nearly 8 years since the enactment of the LGA 2002, a substantial reform of local government's empowering legislation. We agree with the Government that it is an appropriate time to examine how well the Act has been working and at the very least undertake some 'fine tuning'.

The role of the Local Government Act is to provide a legal framework that allows councils to respond to the needs and preferences of citizens in relation to local public goods and services. The LGA 2002 is widely regarded internationally and aspects of our legislation have been widely replicated, particularly in some Australian states. We are pleased that the Government has seen fit to leave the basic architecture of the legislation relatively untouched.

This is not the first time this matter has been addressed and we are somewhat disappointed that very little reference appears to have been made to the Local Government Commission's review of the LGA 2002, which was published in 2008. The Commission undertook a consultative process that both acknowledged the soundness of the Act's architecture and highlighted areas where some improvements could be made.

### *The need for legislative certainty and constitutional recognition*

It is vital that local government's empowering legislation 'works', that is, provides citizens with confidence that councils are operating in a manner which is both lawful and responsive. Consequently our legislation must fulfill two functions; it has to set the operating rules for councils while ensuring they have the flexibility to respond to the diversity of circumstances in which communities find themselves.

Making frequent changes to the operating rules both undermines confidence in local decision-making as well as creating additional costs, as councils adjust their administrative and institutional processes to conform with new legislation. Since 1989 Parliament has seen fit to make major changes to local government on a too frequent basis.

We ask; how are councils to plan for the future of their communities if the 'rules of the game' keep changing. This Bill is simply the most recent in a list of not always wise interventions by central government in the business of local government. It is quite unsettling that each time the country has a change of government the new incumbents feel it necessary to leave their mark on local government. Yes, we agree it is important to ensure our legislation is relevant and allows councils to respond appropriately to community concerns but the frequency of intervention undermines efficiency and effectiveness.

We believe however, that it is time that all the parties in parliament agreed to a common non partisan approach to local government's empowering framework. It is now time to acknowledge local government's role in the constitutional framework of this country and respect its right to govern localities and regions. As Professor John Roberts from Victoria University noted more than 40 years ago:

*The growing power of government, as evidenced by its ever increasing intervention in the economic and social affairs of the people, constitutes another reason for the existence of an efficient system of local government. While central and local government must share, as collaborative partners, the total task of governing the nation, an effective local government structure is an important counterweight to the growth of central government power. Local government is not solely a matter of the management of local services; it provides the democratic machinery for the expression of local opinion on all matters of public policy.*

Councils are not part of Central Government or the Crown, (although like many agencies they may perform delegated functions on behalf of the Crown) however, they play a vital part in the governance of the country. We are concerned at a creeping centralisation that is reflected in greater decision-making powers being transferred to central government. Given that New Zealand is already the most centralised nation in the developed world (Economist, October 31 2009, p. 59), we view these moves as a matter of considerable concern and should be addressed by this Bill.

***What is the problem this Bill seeks to address?***

As we noted in the introduction, after a period of time it is desirable to review statutes as circumstances change and provisions may behave differently than expected. This Bill goes some way towards this, but does not go far enough. There are some aspects of this Bill that we support because they do improve the operation of the principal Act, for example, we support the Government's intent to make council's long term planning process more strategic and less compliance focused, however, much of the Bill appears to us to create further costs with few if any benefits.

The explanatory note states that the underlying policy for the Bill is informed by the following principles:

- that local authorities should operate within a defined fiscal envelope
- that local authorities should focus on core activities
- that local authority decision-making should be clear, transparent and accountable

While these statements are not normally what we would consider ‘principles’ (we accept them as the Government’s policy objectives), we do not agree with the Government that they represent problems that need ‘fixing’. Neither the preamble to this Bill nor the previous Cabinet papers provided any kind of convincing evidence base to suggest local government and the existing long term council community plan (LTCCP) framework were failing.

***Do we need yet another accountability document?***

In his report to the Cabinet Economic Growth and Infrastructure Committee of 17 April 2009, the Minister of Local Government suggested that current approaches to transparency have “resulted in much more information being disclosed but arguably without sufficient attention being paid to its relevance and usefulness”. To solve this ‘problem’, which we disagree with, further accountability documents are to be required of councils, but are they necessary?

The same Cabinet Committee paper commented that “local authority elections rarely focus on spending issues” and blamed this on weak media coverage and the failure of political parties to stand candidates. We were surprised by this statement as local government elections, in our experience, tend to strongly focus on expenditure and rates. In 2007, for example, almost every mayor in the northern part of the country lost their position as a result of concerns about rates, deserved or not.

Such comments are partly driven by the belief that citizens have no interest in local authority elections. We do not agree with that view either as it fails to understand the drivers behind turnout at local authority elections. When New Zealand is compared to similar types of local government systems turnout is holding up quite well, see Table 1.

**Table 1: Electoral Turnout Select Jurisdictions**

<b>Jurisdiction</b>	<b>Turnout %</b>
United Kingdom	35%
South Australia	32%
British Columbia	30.7%
Ireland	50%
Western Australia	34%
New Zealand	49.7%

In Table 1 we have compared New Zealand local government to similar local government systems. European systems, such as Germany and Scandinavian countries, have much higher turnout rates (Denmark for example has a turnout rate of 72%) but then they undertake a much greater range of functions and cost tax payers considerably more.

Turnout is partly correlated to levels of tax and the New Zealand system is one of the cheapest in the developed world. We find in practice that when there are pressing local issues turnout can increase dramatically.

***Isn't local government transparent enough?***

How transparent do we expect our public institutions to be? Unlike central government, the private sector and the non-for-profit sectors, local government is required to operate in an open manner unless their business is commercially sensitive or is dealing with personal information. In addition councils must prepare and publish a range of documents and reports that spell out in detail what they are going to do; why; how much an activity will cost and where the money will come from. And their reports and plans are subject to independent verification from the Office of the Auditor General.

In Table 2 we compare the rules covering local government with those applying to central government

**Table 2      Transparency and Accountability**

<b>Local Government</b>	<b>Central Government</b>
Meetings held and most decisions taken in public	Convention of cabinet secrecy
Agendas usually available to public	Agendas secret
An integrated 10 year plan	No 10 year plan - just very broad brush fiscal strategy
Public consultation on draft plan	Conventions of budget secrecy
Levels of service decisions open to public input	Levels of service decisions by Ministers behind closed doors

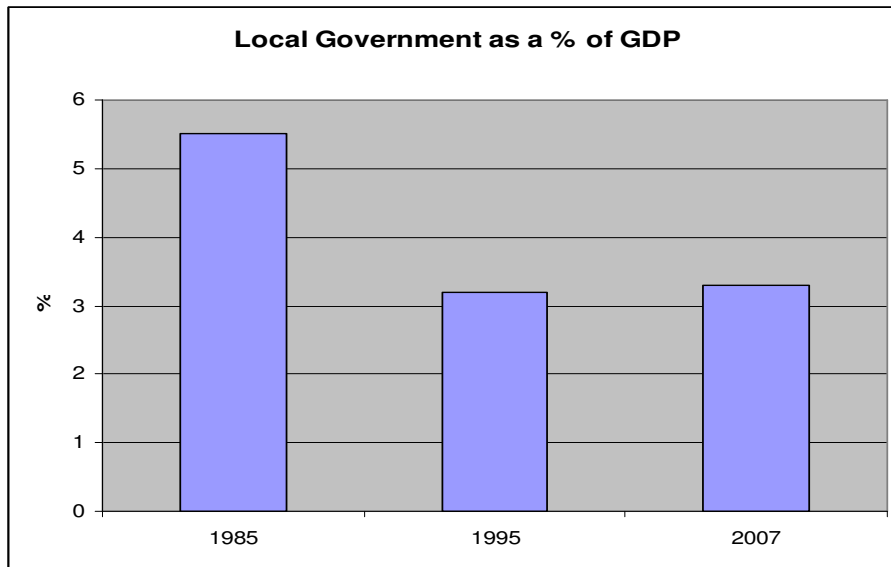
As Table 2 indicates, councils operate with a higher degree of openness than central government. Any additional transparency can only come at a cost and we are not sure that the benefits actually justify it.

***Is council expenditure out of control?***

We are disappointed that the Bill appears to accept at face value uninformed criticism of councils' financial expenditure. The suggestion that councils need to operate within a fiscal envelope represents a lack of understanding of how the existing long term planning framework operates and fails to appreciate the demands made on councils by higher level government.

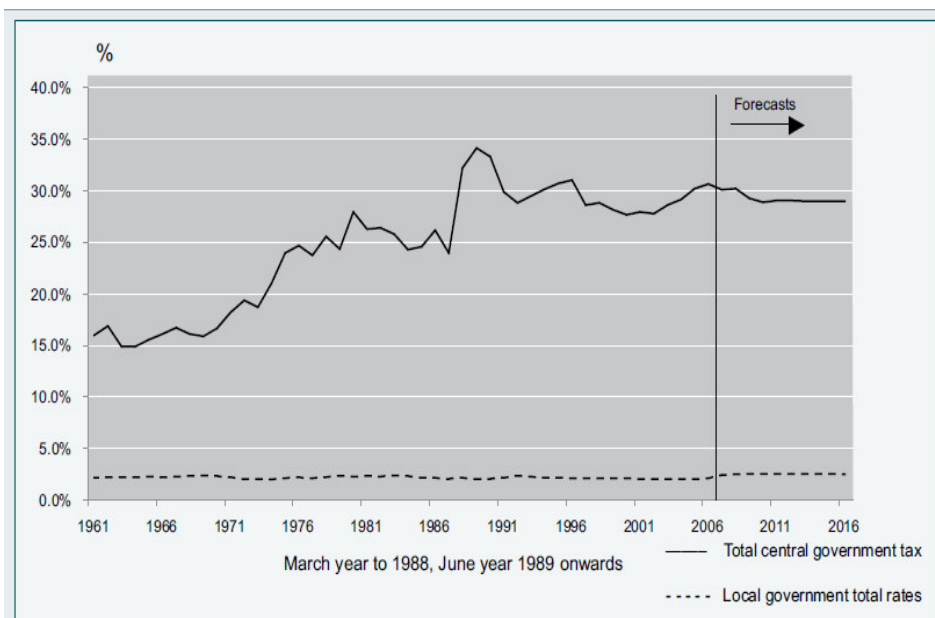
When examined over the long run, council expenditure has remained remarkably steady as a percentage of the country's Gross Domestic Product. Figure 1 shows that since reform in 1989 council expenditure has fluctuated at a level little more than 3% of gross domestic product. This is the second smallest expenditure by local government in the OECD, with Australian local government somewhat smaller, due to the role played by state governments.

**Figure 1 Local government expenditure and GDP**



It is a similar story with taxes. When examined over a long time period, local government revenue appears remarkably consistent. Figure 2 was prepared by the Rates Inquiry and shows in graphic form how local government revenue has behaved in comparison to central government taxes.

**Figure 2 Revenue as a percentage of nominal GDP**



**Chart 7-13 Local government rates and central government taxes as a percentage of GDP, long-term series, 1961 to 2016**

Looking at the data it is very difficult to conclude that local government expenditure is either 'out of control' or councils are irresponsible financial managers. We accept that figures will fluctuate over short periods due to factors such as:

- changes in government policy (e.g. the imposition of water quality standards)
- changes in the environment (e.g. renewal and replacement of major infrastructure)
- changes in community expectations (e.g. a desire for greater amenities)

These are all challenges that councils must face within the context of their own particular communities and the current framework provides a good range of checks and balances to ensure that decisions about such issues are made in a responsible manner.

## 2. Local Government's Policy Principles

As we have noted in the introduction, one of the banes in the life of local government is the unstable nature of our legislative framework as new governments decide to stamp their own mark on what councils are and do. We would like governments to be more circumspect and respect local democracy and the right for citizens to be able to participate in local democratic processes and able to make meaningful decisions about their communities. This is essential if New Zealand is to have a pluralistic society.

Legislation should be based on key principles, something that is lacking in this Bill. (We cannot agree that "local government should focus on core business" can be a principle since 'core business' is contingent on the preferences of the agency in power at any one time.) A good framework will contain appropriate incentives and processes to ensure citizen's expectations can be met in an efficient and equitable manner.

In developing a view on this Bill, we have drawn on the following high level principles which have been endorsed by the National Council of *Local Government New Zealand*.

***Local autonomy and decision-making*** - communities should be free to make the decisions directly affecting them, and councils should have autonomy to respond to community needs

***Accountability to local communities*** - councils should be accountable to communities, and not to Government, for the decisions they make on the behalf of communities

***Local difference = local solutions*** - avoid one-size-fits-all solutions, which are over-engineered to meet all circumstances and create unnecessary costs for many councils. Local diversity reflects differing local needs and priorities.

**Equity** - regulatory requirements should be applied fairly and equitably across communities and regions. All councils face common costs and have their costs increased by Government, and government funding should apply, to some extent, to all councils. Systemic, not targeted funding solutions.

**Reduced compliance costs** - legislation and regulation should be designed to minimize cost and compliance effort for councils, consistent with local autonomy and accountability. More recognition needs to be given by Government to the cumulative impacts of regulation on the role, functions and funding of local government.

**Cost-sharing for national benefit** - where local activities produce benefits at the national level, these benefits should be recognised through contributions of national revenues. Further, where legislation and regulation are introduced specifically for national benefit, the Government should share in the costs of implementation and administration.

In relation to these principles, the Bill appears to fail our principles with regard to reduced compliance costs and local difference local solutions. We are concerned that the savings proposed by the Bill will be lost by the costs associated with new compliance requirements. There is also a push towards greater standardisation.

### **3. The Local Government Act 2002 Amendment Bill: Clause By Clause Analysis**

The *Local Government New Zealand* submission is primarily concerned with the policy issues associated with this Bill. We note that much of the Bill involves what might be described as 'technical' issues, such as detailed changes to council's reporting and financial management provisions, particularly Schedule 10 provisions. These parts of the Bill are being addressed in detail by our colleagues from the Society of Local Government Managers (SOLGM). We have worked on our submissions in tandem and we support their recommendations, unless otherwise acknowledged.

#### **3.1 Consultation changes**

One of the objectives of this Bill is to 'remove unnecessary consultation'. It is not entirely clear what criteria has been used to judge what consultation is unnecessary and what is necessary, but in broad terms *Local Government New Zealand* agrees with the proposals in the Bill.

In addition to the removal of the separate community outcomes process, the areas where current consultation practices are to be amended include:

- Section 78(2) which requires councils to consider community views at each stage in the decision-making process

- Section 88 which requires councils to consult before changing the mode by which a service is provided
- Section 33 regarding the disposal of endowment properties

Removal of these requirements will provide councils with a greater degree of flexibility in the manner in which they operate; we do not expect it to represent much of a financial saving as few councils have been required to utilize the provisions in the recent past. In relation to the Section 88 requirement, councils tend to indicate their desire to change the mode of service provision in the consultations for the long term council community plans (LTCCP) and similarly with endowment property issues. The removal of Section 78(2) will free up the decision-making process for some councils although most have tended to view it as good practice rather than a matter of compliance. The recent High Court case, in which Christchurch City Council had its decision to increase housing rents overturned, was partly as a result of the council's apparent failure to comply with 78(2), and has refocused interest on this provision.

**Recommendation: Consultation**

- 1 That the Select Committee supports the proposed changes to consultation practice

### 3.2 Clause 5 Core Services To Be Considered When Performing Role

This clause requires that councils must, when performing their roles, have particular regard to the contribution that the following core services make to its communities:

- a. network infrastructure
- b. public transport services
- c. solid waste collection and disposal
- d. the avoidance or mitigation of natural hazards
- e. libraries, museums, reserves, recreational facilities and other community infrastructure

One of the principles of good legislation is clarity. It is important that Parliament make its intentions clear when passing legislation, so that those who must comply understand its intent and can adjust their behaviour accordingly. This provision is far from clear. The Cabinet papers suggest that councils have moved away from 'core' services (even though no statutory definition of core exists) and that this is a 'problem'. Unfortunately for the efficacy of this argument the Department of Internal Affairs' own data reveals that the Government's core service list accounts for 97% of all council expenditure - this hardly suggests that councils have somehow overlooked them.

### ***What does it mean?***

The preamble to the Bill throws little light on how to interpret it. We were heartened by the Minister of Local Government's comments in recent Zone meetings, that this isn't a definitive list of all the activities councils can undertake, although we cannot guarantee that councils in the future will hold this view. And certainly some commentators are already suggesting that these are 'mandatory' activities, although not exclusive.

One reading of the Clause requires councils to give consideration to the contribution of the 'core' activities when considering community wellbeing and their contribution to it. We are quite comfortable with this interpretation. However councils will inevitably seek their own legal advice and we can imagine other interpretations, such as 'core services must be undertaken first before other services are considered', and 'core' services are so important they should not be overlooked.

### ***Unforeseen consequences***

Our primary concern is the risk of unforeseen consequences particularly if councils or their citizens (or the courts) interpret 'core' services as mandatory services. Such an interpretation could lead to a number of problems, such as:

1. Few councils will provide all the services on the core services list, For example, an increasing number of councils are exiting from the provision of solid waste and collection/disposal services, leaving it to the private sector and many have no involvement in the funding of public transport or museums. Councils might find themselves under pressure to begin providing new services simply because the legislation has defined them as 'core' or increase existing service levels for the same reason.
2. The definition of a service as 'core' will provide interest groups with additional 'ammunition' to lobby councils to increase provision of that service, possibly at the expense of services the councils have valued more highly. For example, most small rural councils provide minimal recreation services. These provisions will strengthen the ability of special interest groups to lobby for greater provision of those core services currently given low priority.

Our main concern with the provision is the risk of unintended consequences and perverse outcomes, particularly the risk that some councils will be advised to interpret core services as 'mandatory' services and expand into new areas of activity. This could have an impact on local rates as a result.

Similarly we are concerned at the possibility that this process will become part of the council's audit and councils will be required to show evidence that they have indeed given due regard to the contribution of core services. Another cost.

While interpretations vary, one impact that we are certain of is that councils will spend significant sums on legal advice to understand the meaning of the Clause in order to ensure they are not acting *ultra vires*. While we are comfortable with the interpretation that 'core' services should be given regard to whenever councils are considering their roles(s), it is poor legislative practice to enact provisions of such a vague nature, particularly when the problem the clause is intended to fix has never been established.

Our preference is for the provision to be removed from the Bill on the grounds that it does not address a defined problem and may lead to unexpected outcomes. If the provision stays we would be more concerned if the Select Committee succumbed to requests to increase the range of services defined on the list, however worthy. A larger range of services increases the likelihood of the list being interpreted as a prescriptive one, particularly the risk of judicial judgement.

If the clause is retained, then we suggest a clause is added for the avoidance of doubt to make it clear that the 'core services' are not mandatory unless otherwise stated in legislation or regulations. This provision is a solution looking for a problem; regrettably it may create a number of unnecessary problems for councils in the future, should it be enacted. To the degree that a problem could be identified, we would be happy to work with the Government on an equitable solution.

**Recommendation: Core Services**

- 1 That Clause 5 'New Section 11A' is removed from the Bill or
- 2 That a clause for the avoidance of doubt is added to make it clear that core services are not mandatory services, unless separately defined as such.

### **3.3 Clause 12 Repeal of Sections 91 and 92 (Community Outcomes)**

Sections 91 and 92 of the LGA 2002 were introduced to ensure that the outcomes which councils are required to describe in their LTCCPs are the outcomes held by most of the community. These sections were an important aspect of the accountability framework introduced by the 2002 statute, as they were designed to represent the outcomes that were held by citizens as a collective, rather than simply the outcomes held by elected members. They require that every six years councils should liaise with other organisations to design and then implement a process to identify community outcomes.

We note that in the regulatory impact statement, the Ministry of Social Development (MSD) expresses some concern that without this requirement there is a risk that councils will work in isolation rather than with key partners. In some ways the original provision acknowledges that other agencies play important roles in achieving community wellbeing and that councils, if they are to be effective, need to work with other agencies, whether they are business associations or iwi. Related to this is the fact that collaboration mandated by statute might have had the effect of encouraging agencies to participate when otherwise they might not have.

***Will the removal of Sections 91 & 92 save money?***

The cost of the community outcomes process varied considerably between councils ranging from \$10,000 to over \$500,000, depending upon the way in which councils chose to comply - however those costs have already been allocated. They are unlikely to be repeated as most councils have adopted or identified very broad and general outcomes that are unlikely to change or date. As the time for the six year review arrives we had expected that most councils would simply seek to 'tweak' their existing outcomes using a minimal process.

Consequently we see only minor financial savings in the proposal as councils will be still required to include outcomes in their long term plans (LTP). A process will be required to develop draft outcomes and we would expect the majority of councils to seek the input of citizens at an early stage.

Feedback received from some of our smaller councils suggested that Sections 91 and 92 created unrealistic expectations amongst their citizens about the capacity of councils to influence social outcomes, and should be amended. However, removing Sections 91 and 92 does not prevent councils from continuing with a collaborative approach when identifying community outcomes should they wish to operate in that way.

One issue that has arisen however, concerns the situation of councils that are required to review their existing community outcomes prior to the new LTP in 2012. This will require administrative time and some direct costs but will shortly be overtaken by the provisions of this Bill. We recommend to the Select Committee that transition arrangements are introduced to extend the life of community outcomes and remove the requirement that existing outcomes are subject to a six year review.

The proposal to remove sections 91 and 92 is supported as long as councils retain the ability to continue to work in partnerships and involve citizens and agencies in these processes should they choose however we see no value in the requirement to consult on outcomes every three years, a more permissive approach makes sense.

**Recommendation: Community Outcomes**

- 1 That the Select Committee approves the proposed re-definition of community outcomes
- 2 That transitional provisions are made extend the 'life' of existing community outcomes until the 2012 LTP

### **3.4 Clause 13 Audit of Long Term Council Community Plan (LTCCP)**

One of the most common topics addressed by remits submitted to the annual local government conference, concerns the audit of the LTCCP and its cost. Councils frequently raise the cost of audit as an issue and the National Council of *Local Government New Zealand* has been required on a number of occasions to raise these concerns with the Government and the Office of the Auditor General.

#### ***What does the Bill do?***

This section of the Bill makes a small amendment to the provisions requiring that long term plans (LTP) are subject to an audit opinion. It is not clear to us that this provision will make any material change to the practice or cost of the audit. Coupled with the new compliance provisions required by this Bill, we would not be surprised if it resulted in a more complex and expensive audit for council in the future. In our view, the purpose of the audit and how it is carried out needs more consideration than what it received in this Bill.

The requirement that the draft and final LTCCP should be subject to an audit opinion was introduced by the previous government when the LGA 2002 was enacted. To our knowledge New Zealand is the only country in the world where such provisions, that is the audit of draft plans, apply to local government. It has become a critical aspect of the sector's accountability framework but it has also involved a considerable cost, especially to smaller councils where the triennial assessment can be the equivalent of one or two percent of the annual rates bill. Some parts of the sector have asked whether the benefits of the audit actually outweigh the cost. We note, that government officials have concluded that the benefits outweigh the cost but we have not seen any data on which they may have based their opinion.

#### ***Is the audit still required?***

We need to begin this discussion by acknowledging that the requirement to audit LTCCPs resulted in a significant improvement in the standard and quality of councils' long term plans. It took the existence of an independent verifier for council to ensure that their asset management plans were up to scratch and their 10 year forecasts adequately took into account the future challenges facing their communities.

We also note that since 2002 the quality of councils' LTCCPs has continued to improve, much of which is the result of advice and guidance provided by the OAG, yet at some point practice becomes proficient and the regulatory regime needs to change to become more of an 'as required' type. We are disappointed in the failure of this Bill to adequately address the costs created by the audit provision, and the lack of any certainty about how the Bill will influence audit practice and cost in the future.

In our view the audit needs a full analysis and assessment immediately after the first LTP in 2012.

**Recommendation: Audit**

- 1 That the Select Committee add to Clause 13 a requirement that the Minister of Local Government undertake a full review of section 94 following the 2012 Long Term Plan.

### **3.5 Clause 16 New Section 99A PER (Pre-election Report)**

This section of the Bill requires that chief executives prepare a pre-election report two weeks before nominations open. The report must include the funding impact statement, summary balance sheets for the previous three years and statements as to whether the council has complied with its financial strategy. It must also contain information for the coming three years including major projects planned for that period. The objective of the report is to 'provide information that will promote public discussion about the issues facing the local authority'.

We have noted in the preamble to this submission that we do not agree with the view that there is a lack of interest in local government at election time. Turnout rates, for example, continue to be high by international standards for our type of local government system and voters tend to act rationally. We have also highlighted our concern that local government appears to be subjected frequently to policy shifts that have not been subject to any meaningful assessment of costs and benefits from the perspective of councils and their citizens. This is another example. We believe it should be subject to a proper trial to see whether the proposed expense will achieve the objective set out by the Government and whether or not the benefits of this objective outweigh the costs.

### ***The problem of PER***

This proposed report is problematic to *Local Government New Zealand*. Our concerns are these:

1. the proposal is designed to address an apparent lack of interest in the issues facing councils at election time. We simply do not agree with this view. Local newspapers throughout the country take a deep and intense interest in local politics and there is no shortage of information about each council and its performance, from annual reports to long term plans.
2. The proposal places the responsibility on the chief executive to produce the report, for a public audience. The report not only includes copies of past and future financials but also a statement of issues facing the council. There is a risk here that these reports will be regarded as political by an incoming council, particularly as it requires a statement on whether the previous council acted consistently with its financial strategy. There is potential for tension in the council/chief executive relationship, particularly a returning council that believes the pre-election report painted its performance unfairly.

We are also aware of a number of technical and practical issues involved in assembling the information in the proposed timeframe; the difficulty of using unaudited accounts which have the potential to change significantly; changes to financial forecasts due to factors outside councils' control and the degree to which it is a duplication of existing processes. In other words, the PER is yet another substantial accountability document along with a considerable number of others. The SOLGM submission examines these difficulties in depth.

### ***Who should publish it?***

Much of the explanation for the introduction of this provision makes reference to the requirement of central government to publish fiscal updates prior to each general election. We wish to make one point in relation to this argument; fiscal updates are made by the incumbent government and jointly signed with the head of Treasury. The conventions which govern the relationship between the public service and the government make it quite improper for a state service chief executive to report on the fiscal performance of the Government i.e. her employer. Should the Select Committee require councils to undertake this additional compliance burden then it should be jointly signed by the chief executive and mayor/regional chair.

In summary, we have not seen any evidence that this provision is necessary nor has any assessment been done of its cost or the possible impact on council/chief executive relationships. We recommend that the Select Committee either delete the provision or subject it to a trial. *Local Government New Zealand* will be happy to identify a sample of councils that could be used as 'guinea pigs' to enable the Report to be piloted and assessed before considering extending the obligation and expense to all councils.

**Recommendation: Pre-election Report (PER)**

That the Select Committee either:

- 1 delete Clause 16 or
- 2 require the PER to be subject to a trial involving a sample of councils and evaluated on completion before being introduced to the sector as a whole.

### **3.6 Clauses 31 - 32 Water Provisions**

These clauses amend Section 136 of the LGA 2002 to extend the length of any contracts council can enter into with the private sector to 35 years and removing the existing requirement that councils must control the management of water services.

The proposals appear to have been the most controversial aspect of this Bill with the question of whether or not they represent privatisation dominating the first reading debate and almost all of the media coverage. We are not sure that these comments were deserved.

#### ***What does the amendment do?***

Prior to 2002, councils had a broad range of choices as to how they undertook their water responsibilities; these were dramatically restricted by the 2002 Act. The amendment restores some of that flexibility but not all. Public/private partnerships, of the 'build, operate and transfer' type, have been a useful tool for councils in the past. Wellington, Hutt and Upper Hutt Cities have all used variations of this model to build their wastewater treatment plants.

The ability to enter into a public/private partnership in the late 1990's, was widely seen as the only way Wellington City could finally decide what to do about the treatment of its sewerage, which had previously been pumped into the Cook Strait. Given the cost and complexity of the project, it was only by utilizing the knowledge and experience of an international company that enabled the City to put an end to more than thirty years of debate and procrastination. Since the LGA 2002 was enacted, we are not aware of any other public private arrangements of the Wellington type. The LGA 2002 put an end to these options as the 15 year limit was too short for the private sector to recoup their capital costs.

***An issue of discretion***

As noted above, questions have been raised in the media as to whether the provision amounts to privatisation. In our view, as long as councils retain control of pricing and policy the public interest will be well protected. Councillors will act in the best interests of their communities when making decisions about how their water services should be run and managed. While we do not expect a large number of councils to make use of these schemes we do believe that they are a useful tool that will be helpful in some circumstances.

**Recommendation: Water**

- 1 That the Select Committee support Clauses 31 and 32

**3.7 Clauses 39 - 41 (New 261A-261G) Performance Measures**

This clause allows the Secretary of Local Government to make rules specifying performance measures for five activity areas: water supply; sewerage; stormwater; flood protection and the provision of roads. The provision describes what the rules may contain and how they are to be developed and distributed. It also allows the Secretary to levy councils for the cost.

***Why national standards?***

We assume that purpose behind these proposed measures is to provide more consistent and transparent information to allow citizens to assess the quality of services delivered by councils. We agree that consumers of services need sufficient information to make judgements about the performance of their service providers, and that elected members similarly need good comparative information, but we are yet to be convinced that this proposal and its costs are justified.

The group of five activities consists of activities that all citizens use and experience on a regular basis. We are constantly aware of the standards of these services because we use them daily and citizens are not afraid to tell their councils when the services decline or are not up to scratch. Citizens also know that there is a direct link between the standard received and what they pay. Unlike some areas of the economy, where standards may be important, in relation to these activities standards are self evident.

### ***Mandatory groups***

For national standards to occur councils are required to group their activities in a standard way. Clause 2(2) of Schedule 1 requires that councils group their activities within these categories for the purpose of the long term plans and subsequent reporting obligations. The objective of this clause appear to be designed to enable government officials to better monitor trends in expenditure and compare levels of performance but is unlikely to assist councils with the delivery of their services.

Reflecting differences in scale and scope councils have, over time, developed different ways of grouping and managing their activities. Roading in some councils, for example, is such a dominating activity it is better managed in various sub categories and the same applies to water and others in this group of five. In many cases activities are managed together and councils may have aggregated them quite differently, for example managing the 'three waters' as a single group of activities.

These proposals require many councils to reconfigure the way in which they group and manage their activities and will have a cost. In many cases councils will end up operating two systems, a system that works for the purpose of management and a system designed only to meet the Government's administrative requirements.

### ***Can standards work?***

One of the strengths of local government is its diversity and this means having the discretion to decide how to arrange for the administration and management of their business. After all, these are not government services and they are not funded by the government, they are provided on behalf of local citizens who receive the services they pay for. The Government's proposal to impose a standard reporting and management model on councils is almost 'unconstitutional' and interferes with the principle that councils are self governing organisations. At the least the proposal is an unfunded mandate in which costs are imposed for no benefit to citizens.

Even then it is not clear that the information will actually be useful. In summary we have a number of concerns:

1. the cost. This is yet another unfunded mandate which Parliament is considering imposing on councils. Councils will have no choice other than to pass it on to ratepayers
2. the provision has the potential to increase rates and charges as councils that fail to meet the mandatory measures will come under pressure to improve their performance. This can only come at a cost
3. will standards be meaningful? How will citizens make sense of a figure that purports to measure the standard of council infrastructure when service levels will vary throughout a district as councils operate numerous short networks
4. amending administrative systems and replacing existing measures with those mandated by the government involves additional cost
5. as councils operate multiple networks within each category each network is likely to operate at a different standard. Reporting on each network is likely to be time consuming and complex

6. the cost of the audit for this new framework is unknown. We are concerned that it might be greater than the previous performance framework as more is at stake to ensure councils are approaching their measurement in a consistent manner

We are yet to be convinced that the provision will have the value that officials in the Government believe it will have. International benchmarking systems of these types have been remarkably unsuccessful at changing behaviors due to the complexity involved in devising rankings from complex and frequently diverse systems. Without having tested the model we are reluctant to 'roll them out across the whole sector'.

Our preference is for this provision not to proceed on the grounds that we do not believe it will achieve the outcomes the Government is looking for and therefore the costs well outweigh the benefits. If the Government is committed to forcing these additional costs onto local government then at the least we suggest a trial. *Local Government New Zealand* is very happy to identify a representative sample, of councils to trial a set of national standards.

In summary, we disagree with this proposal for its cost; for the degree to which it interferes with the ability of councils to determine how to arrange and manage their own affairs and for the lack of any measurable benefits. Should the Government wish to proceed with national standards then we demand that the Government pay the cost. It is simply unacceptable that yet further costs are placed on councils for what is ultimately the record keeping demand of the bureaucracy in Wellington.

**Recommendation: National Performance Measures**

That the Select Committee:

- 1 delete Clauses 39 - 41 from the Bill, or
- 2 in the event of Clauses 39-41 being adopted require that the cost of developing the standards is funded by the Government, and
- 3 recommend that the standards be trialed in a sample of 10 councils and be subject to a full evaluation before considering whether to extend the requirement to the full sector.

### **3.8 Clause 45 Community Board Funding**

This Clause changes Clause 39 (1) of Schedule 7 by removing the phrase 'out of the general revenues of the district'. The objective of the change is to make it clear that councils can pay for the administrative costs involved in supporting a community board by using a targeted rate. Such targeted rates would be paid by residents living in the area serviced by each board.

The question of how community board administrative costs should be paid has been a controversial one for many years and involves finding a balance between beneficiaries and those who pay. Some councils already use targeted rates to pay for the cost of their community board administration, for example Tasman District, however, their practice has been subject to ongoing debate as the LGA 2002 provision is at best ambiguous.

The provision is not supported by the Community Boards' Executive Committee. Many community board members believe the administrative costs associated with community boards is part of the governance costs that are inherent in a local democracy and thus should not be apportioned. The Executive Committee is concerned that council will misuse their ability to set targeted rates and 'over charge' community boards. How, for example, do you decide what is part of local democratic decision-making, which would have to be funded whether the community board existed or not, and what share is created by the existence of the community board.

The Executive is also concerned that council might use targeted rates as a way of building local opposition to a community board by overstating the actual cost or not taking into account overhead costs that would still have to be met, whether the board existed or not.

Most councils support this provision, as they would consider that an area with a community board does receive additional council services to an area without a community board, such as higher levels of representation. In their view it is only fair that those communities contribute to the cost of receiving higher services than other areas.

*Local Government New Zealand* supports the changes, given that our legal advice has previously indicated that targeted rates were able to be used to pay for the administrative costs of boards, but the wording in the LGA 2002 created tensions with boards simply because of its ambiguity. We hope to have discussions with the Community Board Executive on guidelines for determining charges for community board administration in the future.

**Recommendation: Community Board Funding**

- 1 That the Select Committee support Clause 45

### 3.9 New Clause Infringements

Section 259 provides a mechanism for enabling bylaw breaches to be enforced as infringement offences under the Act. An infringement offence can be prescribed instantly and provides enforcement officers with the 'teeth' needed to disincentivise unwanted behaviours. However, the process for regulating infringement notices under section 259 is overly onerous, and although regulation is desired by councils, section 259 is yet to be used.

Local authorities have only a limited number of ways to seek remedies for breach of bylaws. Many of which involve the consideration of evidence by a District Court Judge. This is a resource-intensive process that local authorities are understandably often reluctant to undertake. This also means that without an active deterrent, many bylaws are proving impossible to enforce.

While this issue is on the Department of Internal Affairs's (DIA) work programme, it is currently deemed to be a low priority and development of an amendment has been stalled for several years, in fact since 2002. It would be very useful to have this resolved before the World Cup as communities will be facing a massive increase in 'freedom campers' and councils are looking for new tools to address the impact of freedom campers on public spaces.

*Local Government New Zealand* perceives the necessary changes to section 259 to be a relatively small piece of work and this Bill presents a golden opportunity to amend the Act quickly and easily.

#### ***Problem with section 259***

The problem with section 259 arises from a narrowly drafted scope of the regulation-making power. It is currently interpreted as requiring individual breaches of bylaws to be separately specified. This interpretation is consistent with the precedent of navigation regulations made under section 699A of the Local Government Act 1974.

As a result, infringement fees can only be issued via separate regulations for each bylaw for each local authority. Although available as an avenue, this process has proven to be both too onerous by local authorities, and too low a priority for individual regulations to obtain a position on the regulatory agenda at the Department of Internal Affairs (DIA). As a result, no regulations have been passed under this Act.

#### ***Amendment options - the category approach***

The usability of section 259 could be improved in a number of ways. However, *Local Government New Zealand* believes the category approach is the most advantageous. Adopting a category approach would expand the scope of the regulation-making power to allow infringement offence regulations to pertain to particular categories of bylaw breaches in either generic or specific terms. There are three main reasons why adopting the category approach is a good idea.

Firstly, the LGA 2002 enables the creation of a very wide range of bylaws. It will not be appropriate for all bylaws to enforce breaches with infringement offences. Adopting the category approach will still require regulation in order to create an infringement offence. This process remains as a check and balance to over-zealous local authority enforcement. It will also limit the growth of infringement offences to where they are most needed. For example, currently ineffective provisions for reducing the negative impact of freedom camping.

Secondly, a category approach would encourage national consistency of fees and offences for councils wishing to create bylaws addressing similar problems. Reducing variability negates arguments of fairness that could otherwise be an issue. It also promotes transparency and a more coherent understanding and enforcement of the law across jurisdictions. Such advantages are lost with either a move towards even more liberal amendments to the Act, or even the status quo.

Lastly, the category approach is the only option available with the potential to improve both transparency and accountability of local authority decision-making. This is crucial to align with the purpose of the TAFM reforms and to allow the introduction of this SOP. More detail is provided on alignment of purpose in a later section.

### ***Specific amendment required***

1. To regulate categories of bylaw breaches generically as well as specifically, a very minor amendment to expand its scope will be required. *Local Government New Zealand* believes this could be achieved by inserting the following wording into section 259 (highlighted below in italics) or similar words to this effect:

#### **259 Regulations**

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:

- a. prescribing breaches of bylaws, *or prescribing a category of breaches of bylaws, or multiple categories of breaches of bylaws,* that are infringement offences under this Act
- b. prescribing infringement fees (not exceeding \$1,000) for infringement offences
- c. prescribing infringement notice forms
- d. prescribing forms to be used:
  - i. polls on a reorganisation scheme
  - ii. for any other matter for which forms are required under this Act
- e. providing for such matters as are contemplated by, or necessary for giving full effect to, this Act and for its due administration

As the LGA 2002 already allows the regulation of infringement offences, *Local Government New Zealand* believes that no further consequential amendments should be needed to any other part of the Act. This includes sections 243 - 246 describing the implementation of infringement offences outlined in Subpart 3 of Part 9.

### ***Consistency with this Bill***

The brief amendment outlined above (or similar wording to this effect) would make up the content of an Supplementary Order Paper (SOP) to the Local Government Act 2002 Amendment Bill (No 2) currently before the House. It is likely to be considered only a minor and technical improvement. However, in order for the proposed changes to Section 259 to be introduced they must be considered to reside within the scope of the Bill as introduced.

The General policy statement for the TAFM Bill states:

- this Bill amends the Local Government Act 2002 (the Principal Act) to improve transparency, accountability, and financial management in local government. The underlying policy for the Bill is informed by the following principles:
  - that local authorities should operate within a defined fiscal envelope
  - that local authorities should focus on core activities
  - that local authority decision-making should be clear, transparent, and accountable

*Local Government New Zealand* believes that the ability to remove unnecessary bureaucracy and encourage national consistency provided by the proposed amendments, are entirely consistent with the principle that local authority decision-making should be clear, transparent, and accountable. Secondly the general policy statement goes on to state that the provisions of the Bill are intended to operate at two levels; one strategic, one operational.

At an operational level, the Bill aims to simplify decision-making processes. This is achieved by provisions that:

- remove unnecessary auditing by taking a number of operational policies out of the long term plan
- remove unnecessary consultation
- level the playing field to better enable the private sector to deliver local authority services

Adopting a category approach to regulating infringement offences will simplify decision-making processes by aligning offences and fees for common bylaws. Regulating issues collectively will also reduce the amount of unnecessary consultation prescribed under the narrow scope of the current Act. Amending section 259 will allow councils to do their job more effectively at an operational level. We believe the proposed amendments fit entirely within the scope of the Bill.

**Recommendation: Infringements**

- 1 That the Select Committee prepares a supplementary order paper to the Local Government Act 2002 Amendment Bill (No 2) to expand the scope of section 259 for the purpose of enabling infringement offences for bylaw breaches.

### 3.10 Bylaws to Control Gang Insignia

This review of the Local Government Act 2002 has provided the opportunity to also examine the adequacy of councils' bylaw making powers, particularly in relation to any emerging issues that have been highlighted in a number of local authority areas, such as the behaviours of patched gang members in public spaces.

A number of territorial authorities have asked for greater power to reduce the likelihood of confrontation between gang members, by enabling them to make a bylaw under the Local Government Act 2002 to prohibit the wearing or displaying of gang insignia.

At present, no territorial authority, other than Wanganui District Council, has the power to control where gang insignia may be worn or displayed.

The wearing or display of such gang insignia in public places is the principal means of identifying the members or associates of different gangs and contributes to, and is likely to promote, further gang confrontations.

To facilitate your consideration of this issue, a draft set of amendments to the Local Government Act are attached (in the form of a Supplementary Order Paper). These amendments are based on the Wanganui District Council (Prohibition of Gang Insignia) Act 2009. This legislation is actively supported by the community and local police, and has resulted in a reduction of gang insignia being displayed in public places within the district.

The suggested amendments ensure a national approach, by enabling territorial authorities to utilise bylaw provisions to prohibit the wearing or display of gang insignia in specific places. The proposal is outlined in Attachment 1.

**Recommendation: Gang Insignia**

- 1 That the Select Committee supports the proposed bylaw making power for the prohibition of gang insignia

#### 4. Summary of Costs and Benefits

One of local government's most consistent and frequent complaints is the propensity by which parliament enacts local government legislation without assessing the costs of that legislation on the local government sector. Sadly, this Bill is no exception. It fails to provide an evidence-based problem statement and recommends a number of unnecessary policy measures that are not only complex but increase administrative compliance, and thus costs.

We acknowledge that the Bill contains some measures that have the potential to reduce administrative costs, we are pleased with the reduction in the number of triggers that cause long term plan amendments, but on balance we think the good work has been outdone by the bad. Some of the provisions in this Bill will result in councils simply duplicating processes at additional cost with little or no value to themselves or their citizens. The Plain English financial statements will be an example of this, as is the requirement to adopt standard groups of activities. Removing unnecessary policies from the long term plan is welcome but some of them, for example development contributions, have separate consultation requirements that are quite costly.

There is no accurate way of identifying the full costs and benefits as we cannot anticipate exactly how councils will react to the new provisions. That indeed is our problem; even the best intended measures might result in unanticipated outcomes as councils interpret requirements in ways not envisaged by the legislators. Consequently a 'keep it simple' philosophy should prevail. The following table summarises our view of the relative costs and savings created by this Bill.

**Table 3 Estimate of Savings**

<b>Measure</b>	<b>Costs</b>	<b>Savings</b>
Core Services	Potentially significant as a large number of councils do not currently provide the 'core'	Zero
Community Outcomes Process		Some savings however most of the costs associated with outcomes was met in 2004/2006. Little future expenditure was expected.
Pre-election Report	New cost, particularly officials' time and some councils will commit to expensive publishing	
Water Provisions		Provides councils with greater flexibility rather than cheaper options

National Standards	Direct cost involved in funding the Government levy for development of standard measures, est. \$1.25m. Possible costs associated with implementing new measurement systems and their audit.	
Reduced Consultation		Fewer LTP amendments and removal of S.88 and S.91(c&d) increase flexibility but represent only minor savings.
Audit of LTCCP S94(1)c repealed		No evidence that this will reduce cost of audit.
Plain English Financials (Cl. 27)	A new administrative cost caused by requirement to prepare additional compliance document	
Amended Schedule 10 provisions	One off costs involved in re-defining activities to be consistent with standard categories.	
Removal of policies from the LTCCP (Cl. 18)	New costs created by requirement to use special consultation policy on a three yearly basis.	

## 5. Conclusion

There are aspects of this Bill we support as they 'fix' issues that have arisen since the LGA 2002 was enacted and we support the Government's goal to make councils' long term planning more strategic, more understandable and less compliant. We are not sure however, that the sum total of these changes will achieve that.

We have left comment on a number of the technical provisions, such as the introduction of a financial strategy and changes to the performance framework provisions, to our colleagues in SOLGM, because we simply have no evidence on which to judge whether or not they will be an improvement. Our members have certainly raised concerns about the administrative complexity of existing accountability and financial management reporting processes, yet we are not certain that what is proposed in the Bill is an improvement.

We disagree with the basic premise of this Bill that transparency, accountability and financial management in local government are poor; however we are very pleased that some of the Government's initial suggestions, for example, binding referenda, have been dropped. Similarly the core service provision is not the risk to good governance that we initially thought it might be.

Our overall impression of the Bill is that it addresses a number of issues that we support, such as reducing the number of triggers that create LTCCP amendments and removing unnecessary policy documents. On the other hand, new process requirements, such as reporting activities on a nationally consistent basis and nationally consistent performance measures, will create additional costs. The value to the sector of many of these additional process requirements has not been properly assessed.

We are particularly concerned that the provisions in the Bill have not been subject to any cost benefit analysis, nor have they been subject to trial and evaluation. Provisions are being extended over the whole country with little consideration of their cumulative costs. Many of these issues involve the new Schedule 10 provisions and raise complex implementation issues. These are covered in detail in the SOLGM submission.

Lawrence Yule  
President  
*Local Government New Zealand*

**6. ATTACHMENT 1 Prohibition of Gang Insignia Bylaw Provisions**

# **Local Government Act 2002 Amendment**

## **(Prohibition of Gang Insignia)**

### **Bill**

#### **Explanatory note**

##### **General policy statement**

The Local Government Act 2002 (the **LGA**) requires territorial authorities to give effect to the purpose of local government including promotion of the social, economic, environmental and cultural well being of communities in the present and for the future. The LGA provides local authorities with power to determine how they will fulfil their mandated roles and responsibility towards communities.

A number of local authorities have become aware of increasing problems created by violent confrontations between rival gangs in their districts. The wearing or display of gang insignia in public places is the principal means of identifying the members or associates of different gangs and contributes to, and is likely to promote, further gang confrontations. Members of the public are intimidated by gang members congregating in public places and wearing gang insignia. There have been repeated instances of residents being frightened by such displays.

In 2009, Parliament enacted the Wanganui District Council (Prohibition of Gang Insignia) Act 2009. This legislation has resulted in a reduction of gang insignia being displayed in public places within the district and it is actively supported by the local police and community.

At present, no territorial authority, other than Wanganui District Council, has the power to control when gang insignia may be worn or displayed. A number of local authorities support taking a national approach to this issue by amending the LGA.

This Supplementary Order Paper provides territorial authorities with the power to reduce the likelihood of confrontation between gang members by enabling them to make a bylaw to prohibit the wearing or displaying of gang insignia in the specified places in the district.

Before making a bylaw, the territorial authority must be satisfied that a prohibition is reasonably necessary to prevent or reduce the likelihood of intimidation or harassment of the public or to avoid or reduce the potential for confrontation by or between gangs. It is also required to consult on any proposal in terms of the procedures in the LGA.

## Clause by Clause Analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

*Clause 3* sets out the purpose of the Bill.

*Clause 4* inserts new sections 147A to 147AK. The new sections provide:

- a new bylaw making power for territorial authorities to designate specified places for the purposes of the Act where specific gang insignia may not be worn or displayed;
- a new offence of wearing or displaying gang insignia in a specified place in the territorial authorities' district; and
- provides police with powers of arrest and seizure of gang insignia being worn or displayed in a public place.

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CI 1                      **Local Government Act 2002 (Prohibition of Gang  
Insignia) Amendment Bill**

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**The Parliament of New Zealand enacts as follows:**

- 1            Title**  
This Act is the Local Government Act 2002 Amendment (Prohibition of Gang Insignia) Act 2010.
- 2            Commencement**  
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3            Purpose – Principal Act amended**  
This Act amends the Local Government Act 2002 to prohibit the display of gang insignia in specified places in the districts of territorial authorities.

**Amendments to principal Act**

**4            New sections 147A to 147AK inserted**

The following sections are inserted after section 147:

**147A    Power to make bylaws for the purposes of prohibiting gang insignia**

- (1)    In this section, unless the context otherwise requires,—
- gang** means—
- (a)    Black Power, Hells Angels, Magogs, Mothers, Mongrel Mob, Nomads, or Tribesmen; and
  - (b)    any other specified organisation, association, or group of persons identified in a bylaw made under section 147AA.
- gang insignia**—
- (a)    means a sign, symbol, or representation commonly displayed to denote membership of, an affiliation with, or support for a gang, not being tattoos; and
  - (b)    includes any item of clothing to which a sign, symbol, or representation referred to in paragraph (a) is attached.
- public place**—
- (a)    means a place—
    - (i)    that is under the control of the territorial authority; and
    - (ii)   that is open to, or being used by, the public, whether or not there is a charge for admission; and
  - (b)    includes—
    - (i)    a road, whether or not the road is under the control of a territorial authority; and

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(ii) any part of a public place

**specified place** means a public place designated as a specified place for the purpose of this section in a bylaw made under this section.

- (2) Without limiting the definition of the term **public place** or **specified place** in subsection (1), for the purposes of this Act, a person is in a **specified place** if he or she is in or on a vehicle that is in a **specified place**.

**147AA Power to make bylaws designating specified places or gangs**

- (1) Without limiting section 145, a territorial authority may, from time to time, make bylaws—
- (a) designating any public place as a specified place for the purposes of this Act:
  - (b) identifying an organisation, association, or group of persons as a gang for the purposes of this Act.
- (2) In making a bylaw under subsection (1), a territorial authority must use the special consultative procedure set out in section 83 of this Act.
- (3) Section 86(2)(a) and (b) of this Act apply to the making of a bylaw under subsection (1) as if it were an activity described in section 86(1) of this Act.
- (4) A territorial authority must not make a bylaw identifying a gang under subsection (1)(b) unless it is satisfied that the organisation, association, or group proposed to be identified has the following characteristics:
- (a) a common name or common identifying signs, symbols, or representations; and
  - (b) its members, associates, or supporters individually or collectively promote, encourage, or engage in a pattern of criminal activity.
- (5) A territorial authority may make a bylaw under this section only if it is satisfied that the bylaw is reasonably necessary in order to prevent or reduce the likelihood of intimidation or harassment of members of the public in a specified place or to avoid or reduce the potential for confrontation by or between gangs.
- (6) A bylaw must not be made under subsection (1)(a) if the effect of the bylaw, either by itself or in conjunction with other bylaws

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made under subsection (1)(a), would be that all the public places in the district are specified places.

**147AB Signposting of specified places**

- (1) A territorial authority must, where reasonably practicable, indicate the location of a specified place designated by a bylaw made under section 147AA by 1 or more clearly legible notices affixed in 1 or more conspicuous places on, or adjacent to, the place to which the notice relates.
- (2) No prosecution under section 147AH, and no arrest or seizure under section 147AI, may be challenged on the ground that a notice was not affixed in accordance with subsection (1).

**147AC Public notice of bylaws and availability of copies**

Section 157 of this Act applies to a bylaw made under section 147AA as if the bylaw had been made under this Act.

**147AD Review of bylaws**

A territorial authority must review a bylaw made by it under section 147AA no later than 5 years after the date on which the bylaw was made.

**147AE Further reviews of bylaws every 10 years**

A territorial authority must review a bylaw made by it under section 147AA no later than 10 years after it was last reviewed as required by section 147AD or this section.

**147AF Procedure for and nature of review**

- (1) A territorial authority must review a bylaw to which section 147AD or 147AE applies by making the determinations required by section 147AA(4) and (5).
- (2) For the purposes of subsection (1), section 147AA(4) and (5) apply with all necessary modifications.
- (3) If, after the review, the territorial authority considers that the bylaw—
  - (a) should be amended, revoked, or revoked and replaced, it must act in accordance with section 147AA(2) and (3):

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- (b) should continue without amendment, it must use the special consultative procedure in section 83 of this Act, and section 147AA(3) does not apply.
- (4) For the purposes of subsection (3)(b), the statement of proposal referred to in section 83(1)(a) of this Act must include—
  - (a) a copy of the bylaw to be continued; and
  - (b) the reasons for the proposal.

**147AG Bylaw not reviewed within specified time frame revoked**

A bylaw that is not reviewed as required under section 147AD or 147AE, if not earlier revoked by the territorial authority, is revoked on the date that is 2 years after the last date on which the bylaw should have been reviewed under that section.

**147AH Prohibition of display of gang insignia**

- (1) No person may display gang insignia at any time in a specified place in the district.
- (2) Every person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.
- (3) Without limitation, and to avoid doubt, a Judge may apply section 128 of the Evidence Act 2006 in deciding whether a sign, symbol, or representation is gang insignia for the purposes of this Act.

**147AI Powers of arrest and seizure in relation to persons displaying gang insignia**

- (1) A constable may, without warrant,—
  - (a) arrest a person who the constable has good cause to suspect has committed an offence against section 147AH(2);
  - (b) seize and remove gang insignia (by the use of force if necessary) that has been or is being displayed in a specified place.
- (2) Gang insignia seized under subsection (1)(b) is forfeited to the Crown if the person from whom the gang insignia is taken pleads guilty to, or is convicted of, an offence against section 147AH(2).

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- (3) If gang insignia is forfeited to the Crown under subsection (2), the gang insignia may be destroyed or otherwise disposed of as the court, either at the time of the conviction for the offence under section 147AH(2) or on a subsequent application, directs.

**147AJ Power to stop vehicle to exercise powers of arrest or seizure**

- (1) A constable may stop a vehicle without a warrant to exercise either or both of the powers in section 147AI(1) in relation to a person if the constable has reasonable grounds to believe that the person is in or on the vehicle.
- (2) A constable who stops a vehicle under subsection (1) must—
- (a) be wearing a uniform or distinctive cap, hat, or helmet with a badge of authority affixed to that cap, hat, or helmet; or
  - (b) be following immediately behind the vehicle in a motor vehicle displaying flashing blue lights, or flashing blue and red lights, and sounding a siren.
- (3) A constable exercising the stopping power conferred by subsection (1) must, immediately after the vehicle has stopped,—
- (a) identify himself or herself to the driver of the vehicle; and
  - (b) tell the driver that the stopping power is being exercised under this section for the purpose of exercising powers under section 147AI(1); and
  - (c) if not in uniform and if so required, produce evidence that he or she is a constable.
- (4) Without limiting section 147AI(1), a constable exercising the stopping power conferred by subsection (1) may do any 1 or more of the following:
- (a) search the vehicle to locate a person referred to in subsection (1);
  - (b) search the vehicle to locate gang insignia that the constable may seize under section 147AI(1)(b);
  - (c) require any person in or on the vehicle to state his or her name, address, and date of birth, or any of those particulars that the constable may specify;
  - (d) require the vehicle to remain stopped for as long as is reasonably necessary to exercise the powers—

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- (i) in paragraphs (a), (b), and (c); and
  - (ii) in section 147A(1), in relation to a person referred to in subsection (1) of this section.
- (5) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who, without reasonable excuse,—
  - (a) fails to stop as soon as practicable when required to do so by a constable exercising the power conferred by this section; or
  - (b) fails to comply with a requirement made by a constable under subsection (4)(c) or (d).
- (6) A constable may arrest without warrant any person who the constable has good cause to suspect has committed an offence against subsection (5).

**147AK Laying of information for offence under this Act**

An information for an offence under this Act may be laid only by a constable.