



15 May 2010

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## MEMORANDUM

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**To:** Mayors, Chairs  
**Cc:** Chief Executives  
**From:** Mike Reid  
**Subject:** Local Government Act (LGA) 2002 Amendment Bill

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The LGA 2002 Amendment Bill recently had its first reading in parliament and has been sent to select committee. The deadline for submissions is Friday 18 June. The bill can be downloaded from <http://www.legislation.govt.nz/bill/government/2010/0142/latest/DLM2922407.html>.

The Amendment Bill is the outcome of the Minister of Local Government's stated desire to improve transparency, accountability and financial management in local government (colloquially referred to by the Department of Internal Affairs (DIA) and ourselves as TAFM).

Much of the Bill is technical and deals with changes to financial policies and the content of Schedule 10. *Local Government New Zealand* will be working with the Society of Local Government Managers (SOLGM) as we did when contributing to the Local Government Commission's review of the LGA in 2008. That means that SOLGM will take the lead on the technical issues and we will generally focus on the high level policy issues.

To assist councils develop their own submissions we have prepared this critique of the Bill.

Submissions should be made to the Clerk, Environment and Local Government Select Committee, Parliament.

Mike Reid  
Manager Governance  
*Local Government New Zealand*

## Introduction

After eight years in operation it is timely to look at the LGA 2002 and see what fine tuning might be due. Since 2002 the need for some of the provisions may have diminished and more effective ways may have been found for undertaking others. This analysis examines some of the major policy changes in the Bill. It is primarily concerned with the provisions in Part 1 of the Bill.

Many of the technical and procedural changes recommended by this Bill will be explored in more detail by the Society of Local Government Managers and the Financial Manager Working Party and a draft submission has been circulated. For more information on their programme of webinars designed to foster discussion on the Bill, please contact Raymond Horan at [Raymond.horan@solgm.org.nz](mailto:Raymond.horan@solgm.org.nz). Local Government New Zealand fully endorses SOLGM's work in this area.

## Policy Principles

In developing a view on the provisions in this Bill we have drawn on the following high level principles that have previously 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.

Ultimately 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 Minister's initial suggestions, for example, binding referenda, have been dropped. Similarly the core service provision is not the risk that we initially thought it might be.

Our overall impression of the Bill is that it addresses a number of issues that we fully 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 which will be covered in detail in the SOLGM submission.

This memo focuses on four particular proposals; the core service provision, changes to the community outcomes process, and the pre-election report and mandatory performance measures.

### **Issues Raised by the Bill**

#### **Clause 5      New section 11A: 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 behaviours accordingly. This provision is far from clear. The preamble to the Bill throws no particular light on what it actually means. We presume, based on the Minister's assurances in recent Zone meetings, that this isn't a definitive list of all the activities councils can undertake although we cannot guarantee that this isn't an interpretation future commentators won't make.

In our discussions with the Minister of Local Government, he has assured us that this is not the intention, rather his view was that these services are of 'core' importance and thus should not be overlooked, i.e. councils should make sure they are undertaken before becoming involved in other activities. If this is the correct interpretation then we see three possible problems.

1. What if councils are not currently providing the core services? At least one council no longer operates a rubbish and waste collection service, having left it to the private sector and most councils are not involved in funding public transport, for example. If this Bill is passed in its current form will there be an expectation that every council will provide every 'core' service? If this is not the case then what is the provision attempting to do?
2. Will the list result in councils that provide a minimal level of some services finding themselves under pressure to increase service quantity and quality? The fact that Parliament has identified these services as important might expose councils to pressure to enhance provision of those activities regarded as minimal. For example, most small rural councils would provide very minimal recreation services and some may not have museums at all.
3. Another problem may occur where councils provide a different level of services to urban as opposed to rural communities. Will the provisions, for example, create pressure to establish public transport and rubbish collection services to rural communities not currently receiving such services?

While interpretations vary, one response that we can guarantee is that councils will spend substantial sums on legal advice in order to understand Parliament's intention and ensure they are not acting *ultra vires*. In short we suspect that this is the sort of provision that will lead to unintended consequences and perverse outcomes. On the basis of the most common reading, they have the potential to cause rates to rise as councils find themselves under pressure to enhance service provision to fulfil these new statutory obligations.

We recognise that it is within Parliament's authority to provide direction to councils yet such direction frequently has financial implications. When a higher level of government forces a lower level of government to undertake services beyond what its citizens are prepared to fund, it is imposing an unfunded mandate. In our view if Parliament wishes to make it mandatory for councils to provide these services it should fund them.

As this discussion has indicated we see little value in parliament enacting provisions which are as ambiguous as this provision. Neither do we understand the problem this provision is designed to address. Greater clarity should assist us to identify an appropriate solution.

***Initial thinking:***

That Cl.5 New Section 11A should be removed from the Bill

**Clause 12      Sections 91 and 92 repealed (community outcomes process)**

Sections 91 and 92 of the LGA 2002 were designed to ensure that the outcomes which councils are required to describe in their LTCCPs, and align their services to, are the outcomes held by

most of the community. 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 well-being 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 the fact that collaboration was mandated by statute might have had the effect of encouraging agencies to participate which otherwise might not have.

Despite this, however, feedback received from some of our smaller councils suggested that this provision created unrealistic expectations amongst their citizens, particularly about their ability to influence social outcomes, and should be amended. Removing Sections 91 and 92 does not prevent councils from continuing with a collaborative approach when identifying community outcomes. The Act is permissive and as long as councils have the ability to continue to work in partnerships and involve citizens and agencies in these processes should they choose; Local Government New Zealand supports this provision.

At best, we see only minor, if any financial savings in the proposal, as councils will be required to consult every three years on community outcomes as part of their LTPs as opposed to the previous six year process.

***Initial Thinking***

That we support the provision

**Clause 16      New Section 99A (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 3 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”.

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.

In summary we have not seen any evidence that this provision is necessary nor has any assessment been done of its cost and the possible impact on council/chief executive relationships.

***Initial thinking***

That the provision is not supported or that it should be subject to a trial involving a sample of councils and evaluated on completion before being introduced to the sector as a whole.

**Clauses 39 - 41 (New 261A-261G) Secretary may make rules specifying performance measures**

This clause allows the secretary of local government to make rules specifying performance measures for 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.

We understand the 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 but are yet to be convinced that this proposal and its costs are justified. We have a number of concerns:

1. the provision has the potential to increase rates and charges as councils that fail to meet the mandatory measures will possibly come under pressure to improve their performance. This will come at a cost.
2. our second concern is more practical. How will citizens make sense of a figure that purports to measure the standard of council infrastructure when service levels are likely to vary throughout a district. Without having tested such provisions we are reluctant to 'roll them out across the whole sector'.
3. 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.

The provision will create both direct and non-direct costs on councils, namely:

- the cost of the Government's levy will be a new cost that all councils will be required to meet.
- amending administrative systems and replacing existing measures with those mandated by the government involves a relatively small but additional cost.
- there is some suggestion that the audit costs for this new framework will be greater as 'more is at stake'.

*Initial thinking*

That the performance measurement programme operate as a pilot programme featuring a sample of councils and only be extended to the full sector on the condition of a successful evaluation.



## Summary Analysis of the Bill

Clause	Heading	Analysis	Financial Implications	Possible Response
4	Community outcomes S.5(1)	Provides councils with greater discretion over definition of community outcomes. Less prescriptive	Neutral	Support
5	Core services (new)	No problem definition. Provision is unclear and may lead to perverse outcomes	May have unintended consequences of forcing councils to increase service levels in 'core' activities.	Disagree: Remove
6	New principles (s14)	No evidence of a problem. Reflects good practice Are these provisions necessary?	More compliance	Support
7		Consequential amendment		
8	Community views S78(2) removed	Provisions have proved too prescriptive and costly to some. Change will reduce compliance burden.	Minor savings at best.	Support
9	SCP84(4)(c) repealed	This provision reduces the scope of the draft LTCCP audit by removing the audit of forecast information and performance framework	May reduce cost of audit - little unclear.	Support
10		Consequential amendment		

11	S.88 repealed	S.88 requires councils to consult before changing the mode of service. It is too prescriptive	Potential savings however this section seldom used.	Support
12	Community outcomes: S. 91 & 92 repealed	Removal of a mandatory provision may diminish willingness of agencies to partner with councils. However still permissive.	Potential savings by not having to do six yearly process.	Support
13	Audit of LTCCP S94(1)c repealed	Reduces scope of LTCCP audit by removing the audit of forecast information and performance framework	May reduce cost of LTCCP audit.	Support
14	Certain decisions S97(1) c & d repealed	Less consultation required regarding strategic assets and capacity	Will reduce consultation costs, however a little used provision.	Support
15		Consequential amendment		
16	Pre-election report (new)	CE to prepare report on council finances and issues. No obvious benefits and will politicise the role of CE	New compliance requirement with additional costs	Disagree: Remove
17	New S.101A Financial strategy	A repackaging of existing measures plus new requirements to adopt a statement which quantifies limits for rates, rate increases and borrowing.	Additional costs created by requirement to develop new policies	Is it helpful?
18	New S.102 Funding & financial policies	Mostly a repackaging of existing policies		Qualified support
19 - 26	Policies removed from LTCCP	Will reduce 'bulk' of the new Long Term Plan.	Use of SCP to adopt policies likely to create additional consultation costs	Qualified support

27	S111 amended (GAAP)	GAAP will no longer apply to a funding impact statement. Exclusion promoted as a way of achieving "plain English" financials.	Some potential costs involved in producing additional "plain English" financial statements. No guidance yet.	Should be subject to a trial to see if investment is worthwhile
28 - 30	Water assessments S125 - 129)	Repeals the prescribed process for undertaking assessments of water and sanitary waste.	Possible minor saving	Support
31 - 32	New S.136, water contracts	Extends the period by which councils can enter into contracts with private sector to 35 years. Something that LGNZ sought in 2002.	No immediate financial implications	Support
33	Endowments; repeal of S141(1)b.	Consultation no longer required to sell or xchange endowment properties. Generally supported by sector.	Neutral	Support
34 - 37	Administrative changes			
38	Regulations: S259 amended	Allows regulations governing format of (non GAAP) financial statements	(see Cl. 27 above)	
39 - 41	Performance measures; S. 259A (new)	Mandatory performance measures for infrastructure activities. Untried so far, should be subject to a pilot programme and evaluated.	Additional costs created by government levy on councils and changing current performance frameworks.	Should be subject to a trial to assess costs and benefits
42 - 44		Consequential amendments		
45	Community board funding Schedule 7 Cl.39(1)	Clarifies law to make it clear councils can fund community boards through targeted rates.	Neutral	Support
46	New Schedule 10	Amended to incorporate changes introduced above	Administrative costs involved in changing accountability and reporting formats and new policies.	Qualified support

