Local Government (Management of Local Authorities) Amendment Bill

// Local Government New Zealand's submission

// September 2026

Introduction

During a time of significant reform for local government, this Bill focuses on fundamental aspects of councils' governance. LGNZ has significant concerns about the uncertainty the Bill's proposed approach would create and that it could cost ratepayers without delivering stronger council governance.

LGNZ believes many aspects of the Local Government Act 2002 could be improved. These include potentially strengthening governance provisions to improve the responsiveness of councils to governance direction. Any legal changes should be accompanied by other measures such as increased professional development for elected members.

We also support elected members receiving necessary advice to carry out their role. However, the Chief Executive is currently accountable to the council for providing this advice under section 42 of the Act.

LGNZ recommends that this Bill does not proceed

While supporting improvement in the Bill's two areas of focus, legal advice we commissioned with Taituarā (see Appendix) notes that the proposed provisions either restate existing law or create unhelpful uncertainties. This means the Bill is unlikely to deliver stronger council governance and could add further costs on ratepayers. As a result, we recommend that this Bill does not proceed.

Instead, these fundamental aspects of local government should be reviewed and reformed through a Government Bill developed through a robust policy process, ideally including engagement with councils and LGNZ.

Legal advice attached sets out concerns with the Bill

While we are opposed to this Bill proceeding, if the Committee is of a mind to progress this Bill then it should seek wider policy and legal advice and make a number of changes. Our initial concerns that this Bill would create uncertainties for elected members and council officials have been borne out by legal advice from Simpson Grierson, which is attached to this submission.

There are two main elements of this Bill: the sections regarding the governing body directing the Chief Executive; and the proposed new subsection 42(3B), which appears to create a new power for an individual elected member to obtain advice from someone other than the Chief Executive.

Role of elected members in management of local authority

In terms of the governing body directing the Chief Executive, the proposed new sections 41B and 42(3A) are largely a restatement of existing law and practice. There is already an ability for the governing body of a local authority to direct the Chief Executive, as well as clear accountability of the chief executive to the council.

While these proposed new sections are largely restatements of the governing body powers, there are some uncertainties with inserting this new language into the Local Government Act, as set out in paragraphs 16 to 18 of the legal advice. This includes "a risk that on their face the [new] direction and supervision power of the governing body could extend into statutory decision-making functions that Parliament has, in other legislation, deliberately vested in named council officers to be exercised independently and impartially".

If there is a desire to proceed with this Bill, we suggest a potentially useful approach would be to replace the proposed new s41B with the following language:

> *Subject to this Act, any other enactment, and the general law, the governing body of the local authority has all the powers necessary for directing and supervising the chief executive in managing the activities of the local authority.*

And to replace the proposed new s42(3A) with:

> *Subject to section 41B, the chief executive, in managing the activities of the local authority and in performing the responsibilities and exercising powers allocated to the role of the chief executive (other than responsibilities or powers relating to the employment of staff), is subject to the direction and supervision of the governing body.*

Both proposals would clarify the intent of the Bill but avoid some of the risks with the currently proposed language.

Member of a local authority obtaining advice from any other person

New subsection 42(3B) does appear to be a new power for individual elected members to obtain advice. Currently individual elected members can obtain advice (and pay for it out of their own pocket, if that advice comes with a price tag). However, adding a legislative power to do so raises several questions that are well set out in the legal advice (in paragraph 23):

> *23.1 Is it only advice personal to them, or must it be advice on council issues?*
>
> *23.2 If it is on a council issue, are they required to share it with all other elected members?*
>
> *23.3 What if each elected member wants to get their own advice on the same issue?*
>
> *23.4 Is the council required to fund the other advice (whether personal or not), and does it fund advice for all elected members on the same issue where there remains disagreement?*
>
> *23.5 If the council is to fund the advice, then does the elected member need to seek the approval of the governing body first?"*

LGNZ recommends that if this Committee wants to proceed with individual elected members having a new legislative power to seek external advice, that it resolves the above questions that arise from the language of the Bill to clarify this new power.

Appendix: Legal advice from Simpson Grierson

Our advice

Prepared for	Scott Necklen, Chief Executive, Local Government New Zealand Suzanne Boyd, Chief Executive, Taituarā
Prepared by	Mike Wakefield, Jonathan Salter and Judith Cheyne
Date	26 August 2026

PRIVILEGED AND CONFIDENTIAL

Local Government (Management of Local Authorities) Amendment Bill

Background

The Local Government (Management of Local Authorities) Amendment Bill (**Bill**) is a Member's Bill[1] that proposes adding new s 41B to the Local Government Act 2002 (**LGA**), to make express provision for the governing body to direct and supervise the chief executive. It also proposes to amend the chief executive's responsibilities in s 42, to add a similar provision to s 41B and expressly provide that a member of a local authority may obtain advice from a person other than the chief executive.

The Bill states that the amendments provide elected members with mandate to more effectively govern and control the activities of a local authority, and that it is intended to make the respective roles of elected members and chief executives clearer, to minimise increasing tension and align governance and management of local authorities with the corporate and not-for-profit sectors.[2]

You have asked us to consider a series of questions about the Bill, with the aim of assisting members to engage with the Bill and to inform and support submissions on the Bill (including by LGNZ and Taituarā). We have also suggested amendments that, in our view, will serve to improve the certainty of the proposed changes.

Summary advice

Is the Bill restating or creating new arrangements

- Proposed ss 41B and 42(3A) provide an explicit statement of the relationship between the governing body and its chief executive, but do not fundamentally change the underlying principles in the LGA that establish and support the separation of governance and management functions.

1 Introduced on 21 May 2026 by Stuart Smith, a National Party MP
2 See: [Local Government (Management of Local Authorities) Amendment Bill | New Zealand Legislation]

- Proposed new s 42(3B) would alter the current framework by providing for individual members of the local authority, as opposed to the governing body, to obtain advice from persons other than the chief executive. There is a lack of clarity around how this provision would operate which would benefit from amendments.

Impact of provisions

- The inclusion of an express statutory power of direction and supervision is unlikely to impact councils where the relationship between the governing body and chief executive (and governance and management) is well understood and respected. However, it could lead to a blurring of the governance-management boundary, with elected members perceiving it as a mandate to become more involved in operational matters. This could potentially increase rather than decrease tension.

- The new power afforded to elected members to obtain advice from persons other than the chief executive could, if not clarified or carefully managed, lead to significant operational and financial implications for local authorities. There would be little impact (and arguably, the provision would not be required) if it was limited to the governing body.

Uncertainties

- The broadly worded direction and supervision powers could be interpreted as extending to statutory functions that other legislation deliberately assigns to council officers to exercise independently, or powers that the governing body has delegated to the chief executive.

- The scope of the power for an individual member to obtain advice is significantly uncertain. As drafted, it raises a number of practical questions, including the sharing of advice, whether multiple members can commission advice on the same issue, whether prior approval from the governing body is required and funding issues.

Corporate alignment

- The proposed direction and supervision provisions broadly align with a specific section of the Companies Act, but there are no similar powers relevant to the non-for-profit sector (where these are trusts, etc).

Suggested changes

- In the table below we have identified our recommended changes against the wording in the Bill, for ease of reference:

Proposed provisions in the Bill	Suggested amendments
Section 41B Role of mayor and other members in management of local authority (1) The activities of the local authority must be managed by the chief executive subject to the direction or supervision of the governing body of the local authority. (2) Except to the extent that this Act provides otherwise, the governing body of the local authority has all the powers necessary for directing and supervising the management of the activities of the local authority.	**Section 41B Role of governing body in management of local authority** Subject to this Act, any other enactment, and the general law, the governing body of the local authority has all the powers necessary for directing and supervising the chief executive in managing the activities of the local authority.
Section 42 Chief Executive (3A) The chief executive, in the performance of responsibilities and exercise of powers under this Act (other than responsibilities or powers that relate to the employment of staff), is subject to the direction and supervision of the governing body of the local authority. (3B) Subsection (2)(b) does not prevent a member of a local authority from obtaining advice from any other person	**Section 42 Chief Executive** (3A) Subject to section 41B, the chief executive, in managing the activities of the local authority and in performing the responsibilities and exercising powers allocated to the role of the chief executive (other than responsibilities or powers relating to the employment of staff), is subject to the direction and supervision of the governing body. *Recommend delete – or amend to:* (3B) Subsection (2)(b) does not prevent the governing body from obtaining advice from any other person.

Questions and Answers

To what extent does the Bill restate existing elements of the LGA, or create new legal arrangements?

Current legal environment

1. We first outline the current legislative environment. Section 42(2) of the LGA states that the chief executive "is responsible to his or her local authority" for implementing the local authority's decisions, providing advice, ensuring delegated responsibilities are properly performed, and ensuring effective and efficient management of the local authority's activities (among other things).[3]

2. There are also explicit responsibilities listed in s 42(3) and a statutory list of the attributes a chief executive is expected to have (and to which councils are expected to have regard to when appointing a chief executive).[4] The chief executive is the only employee the governing body appoints and, in addition to an employment agreement, clause 34(2) of Schedule 7 of the LGA requires there to be a performance agreement.

3. In contrast, the "job description" for elected members is broader, with s 41(3) providing that the governing body "is responsible and democratically accountable for the decision-making of the local authority", and a requirement that governance must accord with the principles in s 39.[5] Those principles effectively shift the onus to elected members to promote the effective functions of the governance / management relationship.

4. The LGA already provides for each chief executive to have an employment / performance agreement that places focus on achieving certain agreed outcomes / targets. The elected council is the other party to these agreements and within the constraints of common law and statutory obligations to be a good employer, is entitled to monitor and enforce performance in accordance with the agreement.[6]

5. These agreements already provide the framework, and constraints, within which the Council may lawfully direct and supervise the chief executive. Anything that compromises the chief executive's ability to meet the agreed performance expectations may be contractually problematic.

3 See ss 42(2)(a) – (d) s 42
4 cl 33 of Schedule 7 of the LGA
5 See s 39
6 A tool that many councils currently use (and will likely still use if the amendments proceed) is a chief executive performance and/ or employment committee, which provides direction to and/ or supervision of their chief executive.

Does the Bill create a new legal context or arrangement?

6. The LGA does not currently confer an *express* power on the governing body to direct or supervise the chief executive's day-to-day management and it does not explicitly define the legal relationship between the chief executive and the governing body. To that extent, the proposed amendments will be new, but on the other hand ss 41B and 42(3A) do not say anything new. We say this as the principles sitting behind the proposed new sections are already fundamental to the existing framework of the LGA (relying on governance and decision-making by the governing body, and implementation by officials).

7. The expression “subject to the direction or supervision…” is, however, open to interpretation, and potentially in damaging ways; see our comment below on uncertainties.

8. Proposed new s 42(3B) is somewhat different, in that it appears to create a new legal power to individual elected members to obtain advice. While the LGA provides that a chief executive is responsible for providing advice,[7] this does not prevent the governing body[8] deciding to obtain advice from any other source. Any decision by the governing body to obtain other advice, as with any other decision, would need to comply with the decision-making requirements of the LGA (the level of compliance of course being dependent on the significance of the issue), and be financially prudent.[9]

9. This is something that is often done by many councils, for example, when they seek an independent legal opinion on a particular issue.

10. However, providing for “a member of the local authority” to obtain advice from any other person steps outside the current LGA framework, which relies on the governing body as a whole receiving advice and making decisions together. There is no guidance on the limits or scope relative to how any individual member might be able to exercise this new power, or importantly, how any advice sought will be funded. The uncertainties with this proposed amendment are discussed in more detail below.

11. Overall, we are not convinced about the mischief the Bill seeks to remedy with the LGA. It appears to be aimed at situations of potential over-reach by chief executives and / or a perception that managers have too much power and can stifle democracy. However, the

7 Under s 42(2)(b), but also s 42(3)(b)

8 Or the Mayor under s 41A, or any individual elected member in relation to matters relevant solely to them, such as compliance with the Local Authorities (Members’ Interests) Act 1968

9 See s 101 LGA

counterfactual is that there have been or are instances where elected members may over-reach and try to control minutiae, rather than recognise the distinction between governance and operational levels. To the extent that practical issues arise, they can stem from trust and competence, which are not matters that can be legislated.

What would the likely impact of the proposed changes be on local authorities, and how certain or uncertain are the changes?

New ss 41B & 42(3A) — governing body direction and supervision power: Impact

12. Where there is a good relationship between the governing body and the chief executive, with good reporting lines established and existing supervisory committees of the chief executive, the separation of governance and management powers is generally well understood and respected by both. Where these features exist, we doubt that these provisions will have much impact (subject to the uncertainties noted below).

13. There will always be grey areas as to whether something is an operational or governance matter, even if these amendments pass, but good policies and / or delegations can provide the appropriate direction and clarity for when there should be referral back to the governing body in situations of doubt.

14. Having said that, including an express direction and supervision power in the LGA could inadvertently "blur" these lines. Elected members may view these changes as requiring or encouraging them to become more involved in operational matters.

15. For local authorities where there is already some tension in the relationship, these amendments may not achieve the impact sought by the Bill.[10] The chief executive is the only employee of the council and must be appointed on the basis that they will be capable of discharging the specific responsibilities placed on them,[11] but trust remains key. It is unlikely that any legislative amendments will be able to address existing tensions, or any lack of trust between governor and manager – due to the inherent relationship borne nature of those matters.

10 The explanatory note states the aim is to clarify roles in order to "minimise the increasing tensions between councillors and senior management of a number of local authorities".

11 And promote efficiency in the local authority, and be a responsible manager, among other matters: Clause 33 of Schedule 7 of the LGA

Uncertainties

16. There is some uncertainty with the broad way in which ss 41B and 42(3A) are expressed. In particular, there is a risk that on their face the direction and supervision power of the governing body could extend into statutory decision-making functions that Parliament has, in other legislation, deliberately vested in named council officers to be exercised independently and impartially.[12]

17. The extent of the direction and supervision power is also unclear where a decision-making function has been delegated by the council to the chief executive. Under common law / administrative law principles a council cannot "direct" the chief executive to make a decision that it has delegated responsibility for to the chief executive. The Council can rescind a delegation and make a decision on any matter itself, but only where a decision has not yet been made by the delegate.

18. We have suggested in our edits above that the direction and supervision power should be subject to "this Act, any other enactment, and the general law" to address this uncertainty. This wording appears in many other Acts, including s 12 of the LGA and s 16 of the Companies Act 1993.

New s 42(3B) - Obtaining other advice: impact and uncertainty

19. As discussed above, including a specific power for the governing body to obtain advice from persons other than the chief executive would simply reflect the current legal environment, and therefore would be unlikely to have any impact.

20. However, s 42(3B) is uncertain in providing that "[s]ubsection (2)(b) does not prevent a member of a local authority from obtaining advice from any other person." It is the individual, or personal, nature of this power that may lead to uncertainty or even inefficiencies for local authorities.

21. Section 42(2)(b) provides that the chief executive "is responsible to his or her local authority" for "providing advice to members of the local authority and to its community boards, if any". There are circumstances when the chief executive may provide advice to individual members (on conflicts of interest, Local Authorities (Members' Interests) Act 1968, etc), but any member needing advice

12 For example, the power in s 129 of the Building Act 2004 for the chief executive to direct action under warrant to address a building causing an immediate danger. Other examples include where legislation requires or expects the chief executive to certify particular documents as accurate, and decision-making on requests under LGOIMA.

on such issues, can also already seek their own advice, at their own cost.

22. In most cases, the advice provided by the chief executive under s 42(2)(b), and s 42(3),[13] is to, or for the benefit of, the organisation as a whole, given the chief executive is "responsible to" the local authority, as a whole.

23. The uncertainty created by s 42(3B) referring to "a member", relates to the extent of the ability for an individual member to obtain other advice:

    23.1 Is it only advice personal to them, or must it be advice on council issues?
    23.2 If it is on a council issue, are they required to share it with all other elected members?
    23.3 What if each elected member wants to get their own advice on the same issue?
    23.4 Is the council required to fund the other advice (whether personal or not), and does it fund advice for all elected members on the same issue where there remains disagreement?
    23.5 If the council is to fund the advice, then does the elected member need to seek the approval of the governing body first?

24. Without these matters being addressed, either in the legislation or through clearly expressed policies, the potential impact on a local authority could be significant. In order to achieve clarity, we recommend that the power, if it is considered to be necessary, is limited to the governing body.

Would the Bill make governance of local authorities more like the corporate and not-for-profit sectors?

25. New ss 41B(1) and (2) are broadly similar to s 128 of the Companies Act 1993,[14] which also refers to "direction or supervision" by the Board of a company.[15]

26. However, s 128(3) provides for a much broader exception than the wording used at the start of s 41B(2).[16] We have suggested

13 The Chief Executive is responsible to his or her local authority for ensuring, as far as practicable, that the management structure reflects and reinforces the separation of regulatory responsibilities from other responsibilities and "is capable of delivering adequate advice to the local authority to facilitate the explicit resolution of conflicting objectives."

14 See [s 128 CA1993]; also see s86 of the Crown Entities Act 2004: [Board's role] "…the business and affairs of a Crown entity company must be managed by, or under the direction or supervision of, the board of the company."

15 We note there are no similar provisions in other Acts relevant to a not-for-profit body that is a trust or an incorporated society, rather than a company.

16 Which provides that the other subsections "are subject to any modifications, exceptions, or limitations contained in this Act or in the company's constitution"

amendments to widen the exception in s 41B(2), and address other uncertainties discussed above, which would provide better alignment with s 128.

27. The other question to consider (potentially for submissions) is why it is considered desirable or necessary that governance of local authorities be more aligned with the corporate or not-for-profit sectors, given that other provisions in the LGA already provide for the authority of the governing body.

28. The Companies Act (and Crown Entities Act) do not have provisions that are equivalent to s 42, re the chief executive, or to the purpose, role and principles of local authorities in ss 10-14 of the LGA. They do not provide that the Boards of companies are responsible and "democratically accountable" for decision-making (as per s 41(3)). Instead, Boards are generally appointed by shareholders as opposed to being elected by communities, and the decisions of companies are governed by their constitution and other corporate arrangements (aside from certain examples, like water organisations which are subject to certain statutory requirements).

Any suggested amendments that LGNZ and Taituarā could seek, that would meet the Bill's purpose of improving management responsiveness to political direction while maintaining appropriate norms around the separation of management and governance

29. If the Bill is to be enacted, then amendments to clarify the scope and intent of the provisions would be of benefit to reduce uncertainty.

30. Proposed s 41B is titled "Role of mayor and other members in management of local authority" but s 41B(1) is framed in a way that refers to the chief executive's management responsibility, not the governing body's role, whereas s41B(2) refers to the governing body role.[17]

31. Elements of section 41B(1) and (2) could be combined into one section, and reference to the chief executive's responsibility combined with s 42(3A), which largely provides for the same matters. We also recommend other amendments (as above) to avoid the uncertainties, as set out in the table in our summary.

17 We also suggest the heading can be amended to refer to governing body, which is defined in s 5 of the LGA, by reference to s 41.