

Supplementary Departmental Disclosure Statement

Local Government Act 2002 Amendment Bill (No 2)

A supplementary departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

The original disclosure statement for the Local Government Act 2002 Amendment Bill (No 2), dated 25 May 2016, can be found at this link:

<http://disclosure.legislation.govt.nz/bill/government/2016/144/>

This supplementary disclosure statement was prepared by the Department of Internal Affairs.

The Department of Internal Affairs certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

21 August 2019

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The Main Areas of Change to the Original Disclosures

This is a supplementary disclosure statement for the Local Government Act 2002 Amendment Bill (No 2).

A supplementary disclosure statement supplements the original disclosure statement for the Bill by reporting the additions and changes that would need to be made to the original disclosure statement to accurately reflect the Bill with the proposed government amendments incorporated.

Where the Bill now also incorporates changes made by a select committee of the House, the supplementary disclosure statement will note these if relevant but will not explain them further.

The main areas of change to the original disclosure statement include:

Council-controlled organisations (CCOs)

The SOP withdraws provisions relating to:

- multiply owned, substantive, water services and transport CCOs and their funding and financing;
- infrastructure growth charges charged by Watercare Services Ltd, Auckland Council's water services CCO; and
- the requirement that local authorities permit CCO boards the opportunity to comment on the local authority's long-term plan.

The SOP also:

- removes the inclusion of a statement of shareholders' expectations in respect of the CCO's contributions to, and alignment with, any relevant objectives and priorities of central government;
- provides for enhanced accountability, planning and reporting arrangements by CCOs;
- enables local authorities to extend the time by which a CCO must adopt its Statement of Intent;
- enables local authorities to engage directly with holding company subsidiaries
- makes the statement of expectations an enabling provision which may be applied if local authorities choose to; and
- retains the current requirements in the Bill for CCOs to meet obligations to Māori.

Other matters

The SOP withdraws provisions relating to:

- rules specifying performance measures in relation to the three waters, flood protection and controls works, and the provision of roads and footpaths; and
- permitting regulations to set financial performance measures for local authorities and CCOs.

The SOP:

- amends clause 30A of Schedule 7 of the LGA02 to exclude ex officio members from the membership of a joint committee for the purposes of determining the number of members that constitutes a quorum for the committee;

The SOP restores:

- the option of transferring land transport functions under the Land Transport Management Act 2003, the Land Transport Act 1998 and the Local Government Act 1974 between regional councils and territorial authorities.

Local Government Commission (LGC) and the reorganisation process

The SOP:

- implements stage one of a reform programme to disestablish the LGC in its current form;
- requires that a reorganisation initiative or investigation request made by a member of the community has the support of a petition of 10 per cent of electors in the relevant area for it to proceed;
- implements interim measures to transition from current arrangements by constraining large-scale reorganisation applications;
- provides for the number of Commissioners to reduce to one should the workload of the Local Government Commission permit a reduction; and
- implements changes to the two stage Order in Council process for implementing a reorganisation.

The SOP removes the following provisions:

- powers for the LGC to initiate reorganisation investigations of its own motion;
- providing the LGC with a greater dispute resolution role;
- the requirement that the LGC's Chief Executive Officer is appointed by and reports directly to the LGC rather than the Department;
- that relevant staff from the Department be transferred to the LGC;
- the equivalent protections from personal liability to those in the State Sector Act 1988 be specifically applied to the Chief Executive and staff of the LGC for actions done for the purpose of the LGC in good faith as they will continue to be protected by relevant provisions in the State Sector Act 1988;
- the requirement that the LGC prepares an annual work programme;
- the ability for the Minister of Local Government to review the operations and performance of the LGC;
- the requirements that the LGC produce a statement of intent and a detailed annual report and provide these to the Minister of Local Government; and
- obligations as to the form and content of annual reports.

Part One: General Policy Statement

The Local Government Act 2002 Amendment Bill (No 2) implements a set of reforms to enable improved service delivery and infrastructure provision arrangements at the local government level. The proposed SOP aligns the Bill to Government priorities for making improvements to the local government system.

The Bill, as reported back from Select Committee, provides for greater use of joint council-controlled organisations (CCOs) for providing services, expanded joint governance arrangements and a broader range of functions to be transferred between local authorities. The Bill provides for new definitions of multiply owned, substantive, transport and water services CCOs.

The SOP removes definitions of multiply owned, substantive, transport and water services CCOs. It takes the establishment and disestablishment of CCOs out of the scope of the local government reorganisation process. It also removes the funding and financing framework for substantive and multiply owned CCOs and the increased regulatory powers to CCOs providing core services.

The SOP focuses on improving the accountability, planning and reporting arrangements for CCOs. The SOP does so by:

- extending the Bill's online publication requirement to include half-yearly CCO shareholder reports as well as statements of intent and annual reports and requires the publication to be done within one month of receipt;
- retaining the requirement for not-for-profit CCOs to include forecast financial statements in their statements of intent;
- enabling local authorities to extend the timeline for the preparation of a CCO statement of intent by up to one month so that the local authority's long-term plan can inform the preparation of the CCO's statement of intent;
- facilitating the direct relationship between local authorities and subsidiaries of holding company CCOs by requiring subsidiaries to provide opportunities for local authorities to comment on their statements of intent, as well as those of the holding company, and for the subsidiary to provide half yearly and annual reports directly to the local authority;
- empowering local authorities to impose additional planning and reporting requirements on a CCO; and
- enabling local authorities to specify a statement of expectations for a CCO.

The SOP removes from the Bill provisions relating to infrastructure growth charges (IGCs) charged by Watercare to new connections. Any potential changes to the regulatory regime for IGCs will be considered as part of the infrastructure funding and financing programme under the urban growth agenda.

The Bill, as reported back from the Select Committee, amended the Local Government Act 2002 (LGA02) to give the Local Government Commission (LGC) greater powers and to increase its accountability to central government through a range of mechanisms such as annual work programme and reporting requirements. The SOP removes the enhanced powers of the LGC and accountability measures to central government. This is stage one of a reform programme to disestablish the LGC in its current form. It also removes the provision enabling the LGC to initiate a reorganisation investigation of its own motion. The LGC's enhanced dispute resolution role is removed by the SOP. Transitional measures providing greater institutional independence for the LGC are removed by the SOP.

The SOP also provides that a reorganisation initiative or investigation request by a member of the community must be supported by a petition of at least 10 per cent of the electors in the affected area in order to proceed. Technical improvements to the two stage Order in Council process to give effect to and implement a reorganisation plan are provided for through the SOP. It also provides that the number of Commissioners may be reduced below the current number of three, should circumstances permit.

The original Departmental Disclosure Statement can be found here:

<http://disclosure.legislation.govt.nz/bill/government/2016/144/>

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>RDC Group consultants published the Independent Review of the Local Government Commission on 28 February 2018, examining the role and functions of the Local Government Commission for the contemporary and future needs of the local government system.</p> <p>The report is publicly available at:</p> <p>https://www.dia.govt.nz/Proactive-Releases#Min</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Two regulatory impact statements were produced to inform the policy decisions that led to this SOP:</p> <p><i>Options for improving the way local government is reorganised</i> (27 November 2018) and <i>Local Government Act 2002 Amendment Bill (No 2) – council-controlled organisations</i> (3 April 2019).</p> <p>These RIAs were prepared by the Department of Internal Affairs. They are accessible at the following link, under the 'local government heading':</p> <p>Please refer to the original Departmental Disclosure Statement which lists the Regulatory Impact Statement <i>Options for improving local government services</i>, March 2016.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>On 28 November 2018 the Treasury RIA team provided the following independent opinion of the quality of the <i>Options for improving the way local government is reorganised</i> regulatory impact assessment mentioned above:</p> <p><i>The Treasury Regulatory Quality Team has reviewed the Regulatory Impact Assessment (RIA) "Options for improving the way local government is reorganised" produced by the Department of Internal Affairs and dated November 2018. The team considers that the RIA meets the Quality Assurance criteria.</i></p> <p><i>Although consultation was limited to targeted stakeholders, these are interim measures while a wider review is undertaken in 2019. It will be important to consult more widely on enduring measures.</i></p> <p>The Treasury did not assess the <i>Local Government Act 2002 Amendment Bill (No 2) – council-controlled organisations</i> regulatory impact assessment.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Please refer to the original Departmental Disclosure Statement for the Local Government Act 2002 Amendment Bill (No 2).	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
No relevant international obligations were identified. This was confirmed by referring to Appendix 3 of the Legislation Advisory Committee, <i>Guidelines on Process and Content of Legislation (2001 edition)</i> , which contains a list of legislation that implements various treaties.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?
Specific consideration of the principles of the Treaty of Waitangi was not considered necessary because the policy given effect by this Bill will not alter councils' current obligations under the Local Government Act 2002 to give effect to Treaty principles. These include requirements for councils to establish processes to provide opportunities for Māori to contribute to decision-making and to foster the development of capacity for Māori to contribute to decision-making. The Bill will also preserve any existing co-governance or co-management arrangements that are established by legislation (including Treaty of Waitangi legislation) and that are between local authorities and iwi or Māori organisations that may be affected by a local government reorganisation or a transfer of responsibilities between local authorities.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
Please refer to the original Departmental Disclosure Statement for the Local Government Act 2002 Amendment Bill (No 2). No advice has been prepared in relation to the changes introduced by SOP as the Attorney-General is not required to consider Government SOPs in accordance with the provisions of section 7 of the New Zealand Bill of Rights Act 1990.	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
The policy and/or SOP has been consulted with the following agencies and organisations: Ministry of Transport, New Zealand Transport Agency, Ministry for the Environment, the Treasury, Inland Revenue Department, Land Information New Zealand, Te Puni Kōkiri, Ministry of Business, Innovation and Employment, Ministry of Housing and Urban Development, Te Arawhiti, Ministry for Justice, State Services Commission, the Ministry of Health, the Department of Prime Minister and Cabinet (Policy Advisory Group). The policy proposals were also discussed with Local Government New Zealand, the New Zealand Society of Local Government Managers and the Local Government Commission.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
The policy proposals that are implemented by this SOP were discussed with officials from Local Government New Zealand, the New Zealand Society of Local Government Managers, and the Local Government Commission. This was done to test and refine potential wording and concepts in the SOP.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
Please refer to the original Departmental Disclosure Statement for the Local Government Act 2002 Amendment Bill (No 2).	

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
The SOP removes funding and financing provisions for multiply owned CCO's. The SOP also withdraws the provisions relating to infrastructure growth charges for further consideration as part of future work on development contributions and targeted rates, under the infrastructure funding and financing workstream of the urban growth agenda. Please refer to the original Departmental Disclosure Statement for the Local Government Act 2002 Amendment Bill (No 2).	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
The SOP implements changes to the two stage Order in Council process for implementing a reorganisation (new sections 25 and 25A). The SOP makes minor technical amendments to the regulation-making power, to improve the practical effect.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO