

Departmental Disclosure Statement

Local Government Official Information and Meetings Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- 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; and
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This 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.

31 October 2022

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Part One: General Policy Statement

The broad policy and purpose of the Bill is to provide clarity and certainty for local authorities on provisions of the Local Government Official Information and Meetings Act 1987 (LGOIMA).

The policy proposals include:

- changes to improve natural hazard information provided in the land information memorandum (LIM); and
- aligning the withholding and certification processes with the Official Information Act 1982.

Natural hazard disclosure in the land information memorandum

The LIM under the LGOIMA is the main source of property information for the public and is a key tool for communicating natural hazard information to buyers so they can make informed decisions.

The provision of better natural hazard information (including the impacts of climate change) on LIMs is an essential step to help property buyers understand natural hazard risk and make informed decisions when deciding whether to purchase a property. Improving natural hazard information on LIMs is a key action under Aotearoa New Zealand's first National Adaptation Plan.

However, there are challenges with how LIMs currently provide natural hazard information. LIMs may lack key natural hazard content, are not effective at communicating natural hazard information, and legal liability issues can inhibit full disclosure of natural hazard information by local authorities.

This Bill amends the LGOIMA to introduce:

- clearer requirements to provide natural hazard information in the LIM (including the impacts of climate change);
- a statutory responsibility for regional councils to provide natural hazard information (including the impacts of climate change) and support to territorial authorities;
- a specific purpose for providing natural hazard information;
- provisions to develop regulations for providing natural hazard information in LIMs; and
- limitation of legal liability for local authorities when disclosing natural hazard information in good faith.

These amendments are aimed at achieving the key objectives of:

- ensuring LIMs provide natural hazard information to property buyers which is clear, concise, nationally consistent in its presentation and easily understood; and
- providing certainty for local authorities about sharing natural hazard information in LIMs and reducing exposure to legal liability.

The proposed limitation of local authority liability will incentivise greater sharing of natural hazard information, while preserving the ability to bring legal action against local authorities where natural hazard information is known but has not been provided. This will provide local authorities with a similar level of protection as they currently have when sharing other official information under the LGOIMA. Affected parties may still bring complaints to the Ombudsman and apply for judicial review.

The new statutory responsibility for regional councils will ensure that regionally held natural hazard information is included in the LIM. Regional councils often hold significant natural hazard information and technical expertise. This new responsibility will formalise existing information sharing between regional councils and territorial authorities. Territorial authorities will retain the sole responsibility for processing LIM applications.

Aligning the withholding and certification processes with the Official Information Act

Like the Official Information Act 1982 (OIA), the LGOIMA enables official information held by local authorities to be available for or protected from public release. Unlike the OIA, the LGOIMA does not provide conclusive withholding grounds for information:

- that would be likely to prejudice the security or defence of New Zealand or the international relations of the government of New Zealand; or
- entrusted to the Government of New Zealand from another Government or international organisation.

The LGOIMA also does not allow the Prime Minister to certify that certain information should not be released if it would be likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand.

The lack of these conclusive withholding grounds may inhibit the ability of local authorities to seek or receive advice on security risks and increase the risk of information being disclosed that could prejudice New Zealand's security or defence or the international relations of the Government of New Zealand.

The Bill amends the LGOIMA to align it with the equivalent provisions in the OIA and improve management of national security risks.

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
Local Government New Zealand's Review of Land Information Memorandums: Achieving best practice (February 2021). The report is available at: https://www.lgnz.co.nz/assets/Uploads/LGNZ-Review-of-Land-Information-Memorandums.pdf	

Relevant international treaties

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

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
The Department of Internal Affairs Regulatory Impact Statement: Improving disclosure of natural hazard information in the land information memorandum system (November 2021). The regulatory impact statement is available from the Department at: https://www.dia.govt.nz/diawebsite.nsf/Files/Local-Government-2022/\$file/Appendix-B-Regulatory-Impact-Statement-Improving-natural-hazard-information-disclosure.pdf The Department of Internal Affairs Regulatory Impact Statement: Strengthening the Local Government Official Information and Meetings Act 1987 (June 2022). The regulatory impact statement is available from the Department at: https://www.dia.govt.nz/Resource-material-Regulatory-Impact-Statements-Index These two regulatory impact statements were assessed as meeting the quality assurance criteria by the Department of Internal Affairs' Quality Assurance Panel.	

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?	NO
The Treasury advised that it was appropriate for the Department of Internal Affairs' internal Regulatory Impact Analysis panel to undertake quality assurance.	

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
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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
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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?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

Natural hazard disclosure in the LIM

Analysis of the size of the potential costs and benefits of changes to improve natural hazard disclosure in LIMs is available in the regulatory impact statements linked above.

The key benefits of the amendments to the LGOIMA are:

- benefits to purchasers of a single source of relevant natural hazard information, which will support understanding of natural hazards and help them to make better informed property decisions;
- better informed property decisions that reduce or avoid natural hazard risks can have wider benefits to long-term community wellbeing and help reduce future government liability from natural hazard events;
- greater certainty for councils about what natural hazard information to include in LIMs; and
- potential reduction in council legal costs as a result of limited liability.

The Department considers that local authorities will likely incur low-medium costs to implement the changes to the LIM system, including one-off updates to LIM systems and processes, and additional regional council resourcing to provide natural hazard information to territorial authorities for LIMs. Regional councils will also incur additional ongoing costs to meet new statutory responsibilities.

The Department will incur one-off costs to introduce and support implementation of regulations, estimated at \$1-2 million, and ongoing monitoring and evaluation costs.

The Department assessed the costs of the package will be low to medium and the benefits will be medium to high overall compared to the status quo.

Aligning the withholding and certification processes with the Official Information Act

The proposals relating to the withholding grounds do not impose any additional costs on local authorities.

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

Natural hazard disclosure in the LIM

Local government's level of compliance with the new requirements for LIMs will likely impact the benefits of the amendments to the LGOIMA. The risks of non-compliance by local authorities and how these will be managed are discussed at pages 44 to 47 of the regulatory impact statement. There is a risk that territorial authorities may not be able to meet new requirements due to costs, a lack of supporting natural hazard data, and limited capability and capacity.

Some regional councils may need to find additional resourcing. However, regional councils already monitor and collect natural hazard information and most already share natural hazard information with territorial authorities. This would formalise and build upon existing communications.

The Department considers that national guidance and other support for local authorities will likely be sufficient to secure expected levels of compliance to achieve the benefits from the scheme.

Aligning the withholding and certification processes with the Official Information Act

Local authorities have limited experience with handling information with security, defence, or diplomatic considerations and may require advice on what needs to be withheld. In general, local authorities have extensive experience in withholding information for reasons that are currently provided for in the Act, but this ability is more limited in smaller local authorities. Much of this experience will be transferrable.

The Department will work with the Office of the Ombudsman to provide advice that will inform local authorities about the sensitivity of information they may hold and information that could be withheld under the new conclusive withholding grounds following the amendment to the Act.

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?
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The changes will improve information for the public to promote better decision making around natural hazard risk. This is aligned with the United Nations Sendai Framework for Disaster Risk Reduction 2015-2030. New Zealand signalled commitment to the Sendai Framework in 2015.

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?

The Department engaged with policy advisers with expertise in Treaty of Waitangi and Māori matters and Māori data experts to identify if the changes to the LIM raised Treaty of Waitangi issues. Engagement indicated that the LIM is not a commonly used tool for communicating natural hazard information about whenua Māori to Māori landowners. Whānau, hapū and iwi landowners are unlikely to purchase a LIM as whenua Māori is generally transferred through succession under the rules of the Māori Land Court. However, if information was sought about the natural hazards that affected the land, a LIM could be purchased by the owners.

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
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Upon introduction of the Bill, the advice provided to the Attorney-General by the Ministry of Justice will be available at:

https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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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
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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
<p>Natural hazard disclosure in the LIM</p> <p>Department officials undertook targeted engagement with technical experts from a range of local authorities on the proposed policy changes relating to natural hazard disclosure in LIMs from late June to mid-August 2021. Officials also engaged with stakeholders who have an active interest in LIMs including property and local government lawyers, Māori data experts, and representatives from the property investment, real estate, banking and insurance sectors.</p> <p>The Department undertook follow-up engagement from February to May 2022 on the operation and implementation of the changes to the LIM system with Local Government New Zealand, Taituarā, and a wide range of local government officers, managers and technical experts. The Department also engaged with natural hazard researchers, property and local government lawyers and members from the insurance, banking, property, and real estate sectors.</p> <p>Officials also met and sought feedback from relevant government regulators including the Real Estate Authority and the Ombudsman in 2021 and 2022.</p> <p>Aligning the withholding and certification processes with the Official Information Act</p> <p>The Department did not engage with local authorities or speak to local government sector organisations about the withholding grounds due to time constraints.</p>	

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?	NO
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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
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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
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual 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?	YES
<p>The Bill limits civil and criminal liability for local authorities when providing natural hazard information in a LIM in good faith. Liability is maintained where a local authority knows of but fails to provide natural hazard information and where there is an absence of good faith, and an application for judicial review may still be brought.</p> <p>Legal liability issues can inhibit full disclosure of natural hazard information by local authorities. The limitation of liability is intended to reduce councils' legal concerns about disclosing natural hazard information and providing greater explanation in LIMs, in particular where natural hazard data is less certain as a result of different scenarios for future climate change impacts. This will enable councils to share more helpful natural hazard information with property buyers in LIMs.</p>	

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
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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
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill adds provisions for regulations relating to natural hazard information in LIMs. The regulations will prescribe:</p> <ul style="list-style-type: none">• any further information that must be included to make natural hazard information in LIMs more understandable; and• how natural hazard information must be summarised and presented in LIMs. <p>The Minister must not recommend that regulations are made unless the Minister has consulted with any persons or organisations that the Minister considers appropriate to consult.</p> <p>Regulations for natural hazard information in LIMs are necessary because they are likely to involve a high degree of technical detail about specific natural hazards, which will change over time as natural hazard data and information develops.</p>	

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
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