

Local Government Reform in 2012

1. In March this year the then Minister of Local Government Hon Nick Smith put out a policy paper outlining four areas of change for the Local Government Act 2002 ("the Act") to be made in 2012 and four additional areas for change in 2013. The policy paper stated that a bill would be introduced in May 2012. And so it was, despite a change in Minister (now Hon David Carter). The Local Government Act 2002 Amendment Bill ("the Bill") was introduced on 30 May and had its first reading on 12 June. The Bill has been sent to the Local Government and Environment Select Committee to hear submissions and report back to Parliament by 15 October. The closing date for submissions is 26 July.
2. The Bill does what the policy paper said it would by:
 - Restricting the purpose of councils;
 - Lowering the thresholds for central Government intervention;
 - Simplifying the process for amalgamation;
 - Including provisions for regulations that set financial benchmarks;
 - Including provisions for councils to set remuneration and employment policy and mandatory reporting requirements; and
 - Increasing the formal power of the Mayor.
3. These changes represent a gentle pull from Wellington of power away from councils. It seems that increased central Government involvement has the support of councils at this point. The political balance may quickly shift if central Government uses its increased powers too often. The rhetoric accompanying the Bill is that central Government will not change its approach of rarely intervening. We note that this Government has intervened in Canterbury at both the regional (pre-earthquake) and district (post-earthquake) level without using the existing provisions in the Act. The new provisions may see the end of special legislation (usually ushered through Parliament under urgency) with the Minister relying instead on his new powers that can be staged depending on the gravity of the perceived problem.
4. We discuss these issues and their implications.

Restricting the purpose of councils

5. The Minister who developed the Act was the Hon Sandra Lee of the Alliance. The 2002 changes to councils were significant. The Act gave a general power of competence to councils, where they had previously been restricted to specified powers, and provided for increased community involvement and reporting. The purpose of the Act is for councils to provide for "*the social, economic, environmental and cultural wellbeing of communities*". The Bill removes all references to this wide purpose and replaces it with providing communities with "*good-quality local infrastructure, local public services, and performance of regulatory functions*". This provision must be "*in a way that is most cost-effective for households and businesses*" (cl7). "Good-quality" is defined as meaning "*efficient, effective and appropriate to present and anticipated future circumstances*".
6. The change in focus will mean that councils should no longer fund activities based on "wellbeing" that cannot be considered a "local public service". The phrase "local public service" is broad enough to provide some wriggle room for activities that do not relate to infrastructure or regulatory functions but the breadth of the phrase is likely to cause debate around council chambers.

Lowering the thresholds for central Government intervention

7. The Act provides for central Government intervention in the management of Councils. The circumstances are very limited and include issues such as a council:
 - a. Not being able to obtain quorum;
 - b. Having a "significant" failure;
 - c. Refusing to perform its functions.
8. Because of these high thresholds central Government has either utilised Resource Management Act 1991 provisions or specific legislation when it has wanted to intervene (i.e. Canterbury Regional Council). Part 10 of the Act provides for the Minister's powers to intervene and this Part is repealed and replaced with new provisions (cl21). The methods of intervention are similar i.e. Crown Review Team or Commission with the addition of a Crown Observer and a Crown Manager. An important change is that these intervention methods can be instigated if there is a "potential" problem or it is "likely" that a council will not give effect to its purpose. The use of these terms means that intervention can occur before a council fails (and it may have been fine).
9. The Crown Review Team method includes investigation and recommendation and can be invoked if the Minister believes a significant problem may exist that the council is unable or unwilling to address. A Crown Observer can be appointed on recommendation of a review or if the Minister believes a significant problem exists and an Observer is necessary to either better enable the council to address the problem or the Minister to monitor the problem.
10. The Observer then "assists" the council to address the problem as well as monitoring and making recommendations. A Manager can be appointed on the recommendation of a Review or Observer, or the Minister believes that a significant problem exists and has not been dealt with.
11. The Manager can "*direct the local authority to act to address the problem*". The most powerful intervention is the appointment of a Commission. This can be as a result of recommendation of a Review or observer or Manager but does not have to be. Another ground for instigating a Commission is the Minister believes that a significant problem is impairing or likely to impair good local government or is endangering or likely to endanger public health or safety. The Commission must perform the duties and functions of the council and its members. Elected members can remain but do not get paid or have input unless appointed to a committee by the Commission. The Commission takes on the role of the 'local authority' but not the elected council except for delegations and determining membership of committees. The Minister is able to postpone an election when appointing a Commission.
12. In addition to these intervention methods the Minister can call an election if the Minister believes that the elected membership means that the council is unable or unwilling to perform.

Simplifying the process for amalgamation

13. Schedule 3 provides for reorganisation proposals and is repealed (cl23) and replaced with a simplified process that does not always require a poll. Like the Act a reorganisation application can be instigated by the councils or Minister. In addition an instigator can now be "*any body or group with an interest in the governance of the area or areas that the reorganisation application relates to*". This interested group replaces the need for a petition of 10% of electors.
14. When assessing a reorganisation application the Local Government Commission must be satisfied that there is "*significant community support*". This phrase is defined and means

support from either a large proportion of the community or the leaders of the community. The Commission can make this assessment based on a petition or other methods including meetings. After determining that an application does have significant community support the next hurdle is an assessment of whether the change will promote good local government. Factors for consideration include cost savings, productivity and simplified planning processes. The Commission must also consider other options in making its assessment to proceed with a draft reorganisation proposal.

15. If the Commission decides to progress the application to a draft proposal then it must consult on that proposal before issuing a final proposal. Once a final proposal is issued "affected electors may demand a poll". A poll can only be demanded if a petition of 10% of voters requests a poll. If such a petition is made then a poll must be made and its result is final. If there is no poll or the poll is in favour of the reorganisation then the Commission prepares a reorganisation scheme and implements it.

Including provisions for regulations that set financial benchmarks

16. The Bill provides for regulations "prescribing parameters or benchmarks for assessing whether a local authority is prudently managing its revenues, expenses, assets, liabilities, investments, and general financial dealings". The use of the word "assessing" is important because it restricts the regulations to reporting requirements rather than prescribing methods of financial management. However cl 22 goes on to specify what these regulations might include and gives as an example that "the debt of a local authority in a financial year, generally, should not exceed a fixed sum per resident". The wording of this example could be interpreted as straying away from an "assessment" and into "management". The policy paper explained these benchmarks as a "softcap" on spending with pressure on councils to not go beyond the benchmarks. Hopefully the Select Committee process will iron out any discrepancy.
17. The regulations can only be made if developed in consultation with the New Zealand Local Government Association Incorporated.

Including provisions for councils to set remuneration and employment policy and mandatory reporting requirements

18. The Bill includes provision for a remuneration and employment policy but does not make it mandatory. If a council adopts a remuneration and employment policy then the Chief executive must abide by it when making employment decisions.
19. An annual report must now record the number of employees and their remuneration in bands of below \$60,000 and then above \$60,000 in \$20,000 increments. The role of the Remuneration Authority is increased to include members of council and boards if requested to by a council.

Increasing the formal powers of the Mayor

20. The Bill provides for a new s41A "Role and powers of mayors" that will not come into force until after the next election. The mayor will have the power to appoint a deputy mayor, establish committees and appoint chairpersons of committees.

Further information

21. If you require any further information or would like to discuss these changes please contact our local government experts Michael Garbett and Rachel Brooking.



Michael Garbett
Partner

Direct 03 467 7173
Mobile 027 668 9752
Email michael.garbett@andersonlloyd.co.nz



Rachel Brooking
Associate

Direct 03 467 7183
Mobile 027 334 4258
Email rachel.brooking@andersonlloyd.co.nz