

Everything councils need to know about the Local Government Amendment Act

Introduction

1. The Local Government Act 2002 Amendment Bill was passed by Parliament on 29 November and commenced (in part) on 5 December 2012. Overall, this amendment clearly signals the Government's intent to constrain councils' activities, to more closely monitor the performance of councils, and to benchmark councils' performance to a greater extent than has happened in the past. Encouraging amalgamations and reorganisation of councils is also a key focus.
2. We assess that the Bill will create uncertainty for councils about what is and is not within their purpose, and will add more compliance costs when new benchmarks are established by regulations.

The key changes

3. The most fundamental and invasive change for councils is the purpose of the Act and of local government has been amended by removing the four well-beings (to promote the social, economic, environmental and cultural well-being of communities). In its place it is the council's role to:

Meet the current and future needs of communities for good quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.

4. "Good quality" is defined as being efficient, effective and appropriate to present and anticipated future circumstances.
5. This new purpose of local government is deliberately intended to be narrower than the previous four well-beings. This focus from the Government on "core services" will be seen by the Court as an objective test. This means that any person can seek a judicial review of a decision or project on the basis that it falls outside the purpose of local government. The "objective" purpose contains a range of subjective elements such as: what are the future needs of communities? What is most cost effective? What is efficient? Effective? Appropriate? All these terms lead to an element of uncertainty that exposes councils to the risk of legal challenge.
6. Councils need to amend their decision making templates to make it clear that they have considered the purpose of local government and are satisfied in a particular case that a project or decision falls within the council's purpose. Doing so will not remove the risk of challenge, but provides the Court with evidence a council has turned its mind to this question and rationally analysed whether it has the power to do what it proposes.

Reorganisation

7. A large portion of the Act now focuses on the ability for any person to request reorganisation of councils. The procedures to commence a reorganisation are more simple. It is for the Local Government Commission to decide whether a reorganisation proposal can be pursued. The Commission needs to determine whether there is demonstrable community support for a proposal for it to be assessed and publically notified.

8. This easier process will enable more people to suggest reorganisation proposals which, in turn, will involve councils spending more time on forming a view on whether a proposal is supported or not.
9. One feature of the reorganisation provisions is that the Minister, by supplementary order paper, has introduced the ability for the Commission to establish local boards, similar to what has happened in Auckland. Once a final reorganisation proposal is prepared by the Local Government Commission it needs to be advertised. A total of 10% or more of persons in a district are entitled to demand a poll. They have 60 working days to do so. If a poll is demanded then the final reorganisation can only proceed if more than 50% of the votes cast in that poll support the reorganisation. If the 50% mark is not reached then the reorganisation cannot proceed. This gives a degree of control to smaller districts that might face 'takeover' by larger councils. The voters in a smaller council will be able to reject an amalgamation if 50% of them prefer that outcome.

Mayor's powers

10. The provisions that give mayors of territorial local authorities additional powers is delayed, and will come into force following the next local body elections on 12 October 2013. The Act specifically states it is the mayor's role to provide leadership to the council and the people of the district, including leading the development of plans, policies and budgets, to appoint the deputy mayor and establish committees and their chairs. Once the mayor has appointed a deputy and committees, it remains possible for the elected council to change those positions in the future. This change largely reflects the conventions that have existed in councils for many years and provides certainty that the mayor occupies a special position in a territorial local authority.

CEO

11. The CEO's functions are slightly amended to require that employment of staff needs to be in accordance with any remuneration and employment policy adopted by the council. This, for example, enables councillors to cap the number of staff or cap salary increases if they wish.

Audit

12. Councils' long term plans are now required to be audited by the Auditor General, removing any choice from councils.

Minister's intervention

13. There is a range of new powers available to the Minister for Local Government to monitor and intervene in the affairs and management of councils. The Minister is not able to intervene into the operation of CCOs, CCTOs or council subsidiaries. Depending on the severity of the problem identified the Minister can take a range of steps such as:
 - a. Requiring information.
 - b. Appointing a Crown review team.
 - c. Appointing a Crown observer.
 - d. Appointing a Crown manager.
 - e. Appointing a commission in the place of the elected members.
 - f. Calling a new election.

14. These options range in severity, depending on the significance of the problem the Minister considers exists. The Minister is required to produce a document establishing guiding principles likely to be adopted when making decisions on intervention in a council's affairs. This will need to be produced following consultation with Local Government New Zealand and is to be produced on or before 31 March 2013.

Benchmarks

15. The Minister has the power to create regulations that establish a range of parameters and benchmarks that councils will be required to report against. The purpose is to enable comparisons between councils and for the Minister to monitor performance and potentially intervene. This will lead to further compliance and information gathering costs for councils.

Conclusion

16. Overall this amendment signals a clear intent by the Government to focus councils on core services and to provide a range of means to ensure they do so. The legislation does not offer many carrots to councils to behave this way. Rather it is littered with sticks to force councils to do so, otherwise the Government can intervene to require that councils are managed in a way more consistent with what the Government expects.
17. This is a fundamental change to the statutory basis on which councils operate and no doubt will require time, internal changes and potentially litigation to bed in.
18. If you wish to discuss any of these changes please contact our specialist Local Government advisors.



Michael Garbett, Partner

Phone: 03 467 7173

Mobile: 027 668 9752

Email: michael.garbett@andersonlloyd.co.nz



Rachel Brooking, Associate

Phone: 03 467 7183

Mobile: 027 334 4258

Email: rachel.brooking@andersonlloyd.co.nz