

November 2009

The Local Government Act Review: what does it mean for the community sector?

When new governments come to power there is almost inevitably a burst of parliamentary activity as new legislation is introduced and old legislation amended or removed entirely. It is the time when those great ideas, suppressed while in opposition, finally get to see the light of day and citizens get to see for the first time the character of the new team. Local government policy is no exception.

The first indication we had of the new government's approach to local government was a Cabinet paper released by the Minister of Local Government earlier this year, called *Improving Transparency, Accountability and Financial Management*. That paper argued for a more simplified planning and consultation structure and, contentiously, the use of binding referenda and the need to focus councils on "core" services. Core services were defined in the paper as water, waste water, roads and rubbish.

Not surprisingly, the issues raised in the paper were regarded with substantial concern by many in local government and the community. While councils were supportive of measures to streamline their planning and decision making processes (regarded as too prescriptive and expensive) there was a concern that referenda would undermine the role of elected members and that parliamentary defined core services would limit the ability of councils to promote social, economic and cultural well being, i.e. respond to local issues.

One of the issues with having a Minister from a minority party is that it is unclear whether his or her policies represent the views of Cabinet as a whole and it was not until late October, when the Minister's proposals were finally signed off by Cabinet, that we were able to get some sort of insight as to the Government's overall policy direction. The Cabinet decisions, (posted on www.dia.govt.nz) have now been sent to the drafting office and a Local Government Amendment Bill is expected to have its first reading before Christmas. So, what are its implications for the community sector?

One key point of interest to the community and voluntary sector is probably the lack of any reference to binding or non-binding referenda—it appears that this was a bridge too far for the National Cabinet. The second point of interest is the manner in which the question of core services has been approached. Instead of a prescriptive list of services that councils are required to do, Cabinet has agreed that when exercising their powers councils must have regard to the contribution to community well being by:

- Infrastructure (roading, water, waste water, drainage and flood protection);
- Solid waste and collection services;
- The mitigation of risk and protection of communities from natural disasters;
- Libraries, reserves and recreational activities;
- The preservation/development of culture and heritage;
- The performance of regulatory responsibilities and other statutory duties.

It is not clear what this list actually means. To "have regard to" is one of those phrases that are largely bereft of meaning, at least until they end up in front of the Court of Appeal. It is certainly not prescriptive. Perhaps notable is the lack of any reference to social, community or economic development compared to the emphasis given to the cultural and recreational sectors. Needless to say there is no policy rationale for this particular selection of core services.

The other issue that may be of interest to the community and voluntary sector is the decision to remove the community outcomes process and encourage councils to identify outcomes which more closely reflect the activities councils undertake, and to consult as part of their long term plans. This proposal effectively diminishes the ability of community organisations and citizens to influence the strategic direction of their councils. Again, it is not prescriptive in that councils can, if they wish, undertake a more expansive and collaborative approach.

Whether the Bill receives its first reading in December, or shortly in the New Year, the Minister has promised that there will be a full select committee process which is likely to continue through till June 2010. That should provide plenty of time for groups and organisations to prepare submissions and contribute to the select committee process.

Mike Reid, Manager Governance, Local Government New Zealand

Parliament

A quieter month in Parliament, with the House just resuming after a two week recess. Although during a recess the House does not sit, the work of Parliament goes on. Select committees, for example, continue to meet. This can however create a news vacuum, obligingly filled during this recess by Rodney Hide and Hone Harawira.

Announced

Proposed wards and boundaries for Super City

The Local Government Commission has released details of the proposed new wards and boundaries of the new Auckland "Super City". The Commission has recommended there be 12 wards, with a total of 20 councillors including the Mayor (eight wards with two councillors each and four wards with just one) and 19 local boards with 126 members (5-9 members per boards). The number of boards is lower than the 20-30 discussed by the Government but the Commission felt that less and therefore larger boards would have more "muscle".

Boundaries for the new wards have also been drawn up. The public have until 5:00pm Friday December 11 to make submissions on the Commission's proposals. The Commission recognises that this does not give submitters very long, but boundaries have to be set by March 1 2010 to allow for local body elections—under the new structure—in October 2010. Submissions can be sent to Local Government Commission, PO Box 5362, Wellington or emailed info@lgc.govt.nz For more information about the proposal, including maps of wards and boundaries go to: www.lgc.govt.nz

Super portability laws to be introduced

The Government has announced that it will introduce legislation this month allowing New Zealanders moving back from Australia to bring their retirement savings with them. Currently, New Zealanders living and working in Australia must contribute to an Australian-approved superannuation fund—and their savings are locked into the Australian scheme until they reach retirement age. Under an agreement between the Australian and New Zealand governments New Zealanders moving back home will be able to have their savings transferred to KiwiSaver funds. Often referred to as "super portability" the move is part of the Single Economic Market programme with Australia. The new law should take effect from the middle of next year, but this is dependent on Australia also passing law changes.

Changes to name suppression laws recommended

The Law Commission has released a report recommending that court proceedings be more open and that the rules about suppression of names be more transparent. In its report the Commission says that courts currently have a broad discretion to allow the suppression of names, but this should be tightened so that name suppression is only used, for example, when there is a risk of prejudice to a fair trial or undue hardship to victims, or if naming the accused would identify another person who has name suppression. The Commission recommends that the grounds for suppression be specified in legislation. Justice Minister, Simon Power, has announced the Government will consider the recommendations—he is also interested in looking at a national register of court suppression orders and how to control the publication of suppressed information on the internet. The report *Suppressing Names and Evidence* can be read at www.lawcom.govt.nz even greater increases

Introduced

Members' Bill: Education (Freedom of Association) Amendment Bill

Introduced by ACT MP, Sir Roger Douglas, this Bill seeks to make membership of student unions voluntary. National has supported the Bill through its first reading and the Bill has been referred to the Education and Science committee (submissions close 31 March), but it is not known whether National will support the Bill when it returns to the House.

Interestingly, similar legislation passed in Australia led to the collapse of student associations, only to see universities & the Government funding the associations to ensure the provision of essential student services. Student associations are not just (or even) breeding grounds for personal political agendas.

Members' Bill: Head of State Referenda Bill

Introduced by Green MP, Keith Locke, the Bill proposes a two-stage referendum process on whether New Zealand should retain the monarch as our Head of State. If the results of the first referendum were that a majority of New Zealanders wanted to change, a second referendum would be held asking us to vote on two options—a directly elected (elected by voters) New Zealand Head of State, or a Head of State selected by at least 75% vote of Parliament. At the time of writing the Bill has yet to have its first reading.

Submissions requested

Injury Prevention, Rehabilitation and Compensation Amendment Bill

As discussed in last month's *Law Scene*, the Government finally had the numbers to introduce the Injury Prevention, Rehabilitation and Compensation Amendment Bill late last month. The stated purpose of the Bill is "to improve flexibility in the ACC scheme". It reduces some ACC entitlements, makes some increases to ACC levies, and delays the requirement for ACC to be fully-funded from 2014 to 2019.

There remains considerable opposition to the Bill. Although you could be forgiven for thinking that the main problem with the Bill is the increase in ACC premiums for motorcyclists, there remains concern, for example, at cuts to existing programmes even before the Bill is passed. Under new guidelines for dealing with sensitive claims, sex abuse claims victims must be diagnosed with a "mental illness" to qualify for ACC-funded treatment (previously the test was "mental injury") and claimants must undergo independent assessment after 16 weeks. (The Minister has since announced that the changes will be reviewed after six months.) A recent decision to stop funding a national falls-prevention programme for the elderly—an internationally recognised programme—has also been criticised.

The Bill was referred to the Transport and Industrial Relations committee, and signalling the Government's intention to move quickly on this Bill, submissions close 26 November.

Electoral (Administration) Amendment Bill

This Government Bill establishes a new Electoral Commission, an independent agency responsible for electoral administration & transfers over the functions of the current Electoral Commission and the Chief Electoral Officer. Introduced on 22 October, the Bill has been referred to the Justice and Electoral committee. Submissions close 10 December 2009.

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Legislation Update

| Legislation | Stage and Progress | Impact |
|---|--|---|
| Child and Family Protection Bill | Government Bill. Introduced August 2009. | Provides greater protections to children affected by domestic violence. |
| Children, Young Persons & Their Families (Youth Court Jurisdiction & Orders) Amendment Bill | Government Bill. Submissions closed. Report now due 27 November 2009. | Introduces measures aimed at reducing violent and repeat offending by children and young people. |
| Corrections (Contract Management of Prisons) Amendment Bill | Government Bill. Reported back. Has had Second Reading. | Allows for competitive tendering for the management of prisons. |
| Crimes (Provocation Repeal) Amendment Bill | Government Bill. Reported back. | Amends Crimes Act to remove partial defence of provocation. |
| Crimes (Reasonable Parental Control and Correction) Amendment Bill | Members Bill (John Boscawen–ACT). Introduced 26 August. | Amends section 59 Crimes Act to allow parents to use a “light smack” to correct their children |
| Criminal Investigations (Bodily Samples) Amendment Bill | Government Bill. Passed (see page 4). | Gives Police wide powers to collect DNA samples from people before they are charged or convicted. |
| Education Amendment Bill | Government Bill. Reported back. | Bill to help identify unregistered teachers and reduce compliance costs of Police vetting. |
| Electoral (Administration) Amendment Bill | Government Bill. Submissions close 10 December (see page 2). | Establishes new Electoral Commissions responsible for electoral administration. |
| Gambling Amendment Bill (No.2) | Labour Bill. Reported back. Second Reading 12 May. | Contains technical amendments to allow original Act (2003) to operate as intended. |
| Gangs and Organised Crime Bill | Government Bill. Submissions closed. Reported back. | Increased penalties for participation in organised criminal groups. |
| Immigration Bill | Labour Government Bill. Reinstated. Passed (see page 4). | Rewrites and consolidates immigration legislation, introduces new visas. |
| Injury Prevention, Rehabilitation and Compensation Amendment Bill | Government Bill. Submissions close 26 November. Report due 12 February 2010. | Reduces some ACC entitlements, makes some increases to ACC levies, and delays the requirement for ACC to be fully-funded from 2014 to 2019. |
| Judicial Matters Bill | Labour Government Bill. Reported back. | Establishes Office of Judicial Conduct Commissioner to receive complaints about conduct of Judges. |
| Legal Services Amendment Bill | Labour Government Bill. Picked up by National. Reported back. Has had Second Reading. | Simplifies legal aid process for victims of crime at Parole Board hearings and coronial inquests. |
| Patents Bill | Government Bill. Submissions closed. Report now due 30 March 2010. | Updates New Zealand’s patents regime. |
| Public Health Bill | Labour Government Bill. Reported back from select committee. Reinstated. | Revises public health legislation including border protection and quarantine provisions. |
| Remuneration Authority Amendment Bill | Government Bill. Introduced 14 September. Reported back (see page 4). | Will require Remuneration Authority to consider economic conditions when determining salaries and allowances. |
| Residential Tenancies Amendment Bill | Government Bill. Submissions closed. Reported back. | Reflects significant changes in the rental market since the 1986 Act. |
| Sale and Supply of Liquor and Liquor Enforcement Bill | Labour Government Bill. Reinstated. Submissions closed. Report was due 10 September, now due 30 June 2010. | Gives communities greater say in liquor licensing decisions, makes it an offence for adults to supply alcohol to minors without parental consent. |
| Sale of Liquor (Objections to Applications) Amendment Bill | Member’s Bill (George Hawkins). Submissions closed. Report now due 30 June 2010. | Restricts the number of liquor outlets and makes wider provisions for objections to licenses. |
| Search and Surveillance Bill | Government Bill. Submissions close 18 September. Report due 1 May 2010. | Widens ranges of offences for which communications can be intercepted. |
| Sentencing and Parole Reform Bill | Government Bill. Submissions closed. Report now due 30 November. | Introduces tougher parole laws. Bill also introduces “three strikes” policy for serious offences. |
| Taxation (International Taxation, Life Insurance and Remedial Matters) Bill | Labour Government Bill. Reinstated. Passed (see page 1). | Introduces business tax reforms and payroll giving system for charitable donations. |
| Waka Umanga (Maori Corporations) Bill | Labour Government Bill. Reported back from select committee. Reinstated. | Provides for the establishment of new legal entities by tribal groups or Maori associations. |

Reported back

Remuneration Authority Amendment Bill

The Transport and Industrial Relations committee have reported back on this Bill and recommend that it be passed. The Bill requires the Remuneration Authority to take into account “adverse economic conditions” when setting the salaries of Members of Parliament and other people covered by the Bill.

Although the Bill has yet to be passed, the Remuneration Authority recently announced that there would be no increase in MPs salaries and allowances this year. This is the first time in 17 years there has not been an increase. The Authority said its decision took into account current economic conditions, the motion passed by Parliament earlier this year recommending they not receive an increase (although as an independent body the Authority was not required to consider this) and also the reduction in the growth of state sector pay in 2009.

Unrelated to the Remuneration Authority’s decision, but still on the subject of MPs funding, the Speaker has just announced the triennial review of MPs funding entitlements. The Parliamentary Service Act 2000 requires that a review of funding for administrative and support services to Parliament and MPs, and funding entitlements be carried out at least once in every parliamentary term. The review is carried out by an Appropriations Review Committee—this year led by former MP Doug Kidd. The report will be publicly available after it has been tabled in the House. Reports from previous reviews can be read at www.parliament.nz

Passed

Criminal Investigations (Bodily Samples) Amendment Bill

This Bill, introduced early this year as one of National’s election promises, has been passed. The new Act gives Police increased powers to obtain DNA samples—these new powers to be introduced in two stages. The first stage, coming into effect July 2010, allows Police to take samples from people charged with a range of serious offences. Offences that will now allow the taking of DNA samples include assault with a weapon, receiving property worth less than \$1000, unlawfully carrying a firearm and wilful ill-treatment of animals. The second stage of the new law, to be implemented in 2011, allows Police to take a DNA sample from any person they intend charging with a criminal offence. The Ministry of Justice estimate that 4,000 more DNA samples than usual will be taken in the first year with an additional 5,000 samples when the second part of the new law takes effect.

The Bill has been controversial from the outset. In February 2009 Attorney-General, Chris Finlayson, issued a report saying that the Bill appeared to be inconsistent with the Bill of Rights. The Privacy Commission is disappointed that their submission recommending an independent judicial oversight body was not acted upon. And the Bill has been opposed through all stages by the Greens and the Maori party. Of particular concern to both parties is that Maori are more likely to suffer under the legislation and are more likely to be targeted to take a sample. The DNA databank in the UK has the DNA of 75% of young black males compared to DNA sample from just 22% of young white males.

Immigration Bill

The review of Immigration laws leading to the passing of this Bill began in late 2004. This Bill was introduced by the Labour-led government in 2007, survived a change of government and was passed last week. The purpose of the new Act is to enhance border security and to improve the efficiency of the New Zealand Immigration Service.

Some features of the new law include allowing the collection and storage of biometric information for identity purposes (photographs, fingerprints and iris scans), a universal visa system that will mean, for example, that all foreign nationals will require a visa to be in New Zealand, and a new refugee and protection system—the new Act incorporates the UN Convention Relating to the Status of Refugees. More information about the new Act can be read on the Department of Labour website www.dol.govt.nz

News

Government data website

The Government has launched a web-based pilot project to make it easier for people to access non-personal government data. Currently, most government departments hold and produce a vast amount of data and information but this is spread amongst a number of different websites and can be difficult to find or access. The new website www.data.govt.nz will act as a directory or catalogue of existing data on government agency websites. The pilot scheme will be reviewed in June 2010.

Social Report 2009

The Ministry of Social Development has released the Social Report 2009, a report (updated annually) that charts our progress across 43 social and economic indicators. Unsurprisingly, given current economic conditions, some of the findings are not good. For the first time since 1998 the median hourly wages has decreased. While the decrease appears small (\$18.75/hour down from \$18.78), this follows a 17% increase over the past nine years. Housing affordability has declined, with 29% of people spending a third of their disposable income on housing, youth unemployment has increased markedly and 14.5% of people said they do not have enough money to meet their everyday needs.

But apparently we are happy. 85.8% of New Zealanders are happy with their lives. The report can be read at www.socialreport.msd.govt.nz

This is the last Law Scene for 2009. It has been a busy year, with the new Government introducing a raft of legislative change and with some interesting battles and debates still to come. To watch out for: Emissions Trading (if not resolved this year), the possible repeal of Foreshore and Seabed legislation, how to resolve MPs allowances and MMP.

We from the Law Scene team wish you all a peaceful and restful break.

New Zealand Federation of Voluntary Welfare Organisations

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