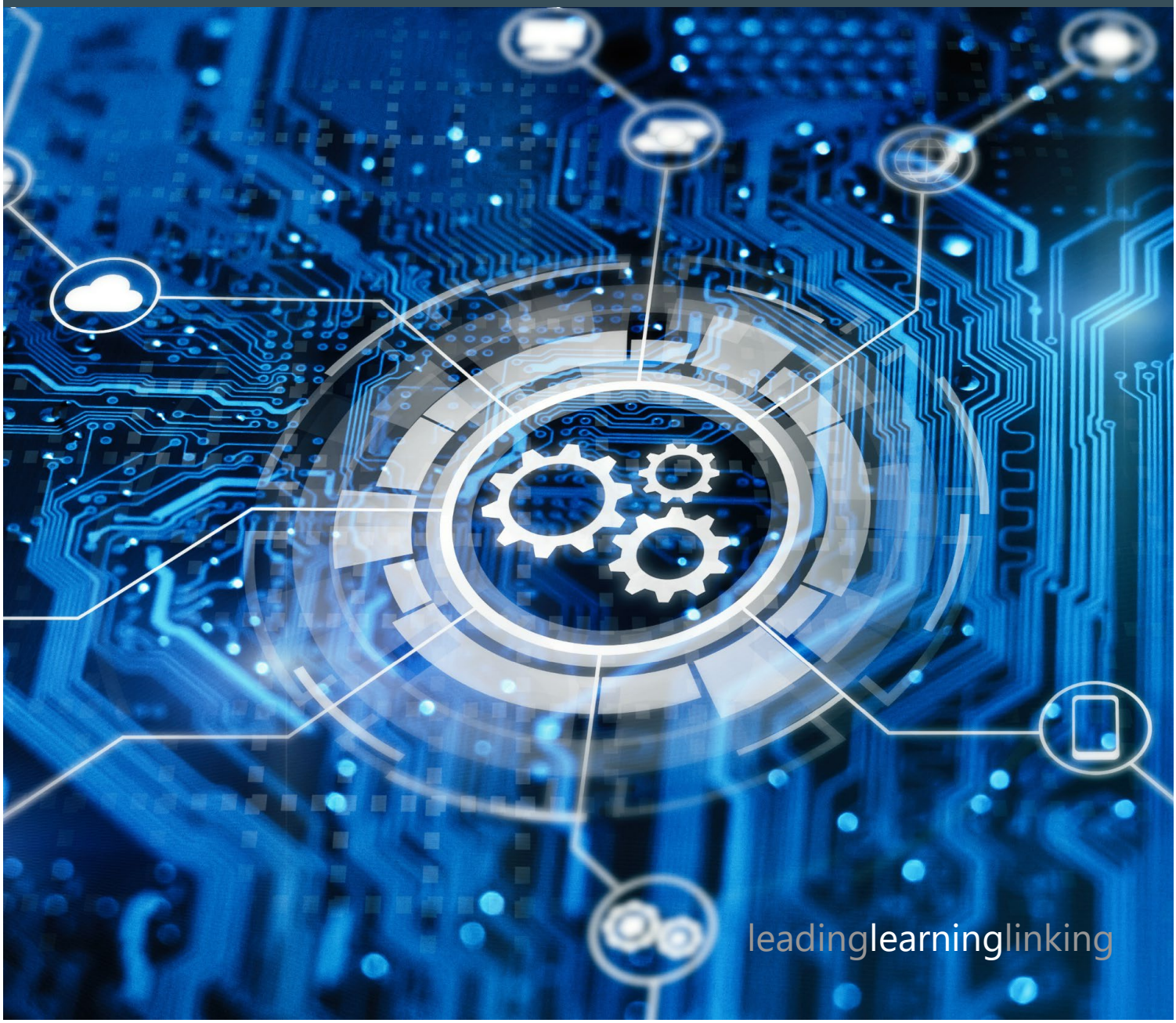
Taituarā
Local Government Professionals Aotearoa

Tuning Up the Engine - Potential Changes to Local Government Law

A Submission to The Hon Nanaia Mahuta, Minister of Local Government
November 2020



Foreword

This document represents our delivering on the commitment we made in our Briefing to you as the incoming Minister of Local Government.

Taituarā — Local Government Professionals Aotearoa considers that most of the legislation in your portfolio is not fundamentally broken. Some aspects, such as codes of conduct, reflect the philosophy of the Government of the day. Other aspects may have created more problems than they solved – section 41A being one such example. Some, such as the Members' Interests Act 1968, represented the best wisdom of its time, but is now simply outdated. Still others, such as the recommendations regarding dog registration, support some streamlining of services in a digitised world.

In short, there is ample room for the legislative engine to receive a 'tune-up'.

We set out a range of potential changes to the legislation that falls within the ambit of your local government portfolio. Many of these changes have themes around reducing unnecessary compliance costs, improving transparency and accountability, or bringing out-of-date legislation into the modern era.

For the most part, we steer clear of amendments to legislation that fall within the purview of other Ministers, except where change may be necessary to give effect to other recommendations. For example, this submission is silent on the Resource Management Act 1991 and the Sale and Supply of Alcohol Act 2012 (though we have views on aspects of both).

The result is a submission that makes 63 recommendations to seven different pieces of legislation and associated regulations.

We look forward to discussing these recommendations alongside your Government's intended legislative and policy programme at our next meeting.

Phil Wilson
President
Taituarā — Local Government Professionals Aotearoa
November 2020

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Part One: Amendments to the Local Government Act 2002 and Regulations

Taituarā recommends:

Quorums

1. That the temporary suspension of the requirements that elected members be physically present in meetings be made permanent, subject to appropriate safeguards.

Risk management and assurance

2. That a principle requiring councils to provide for sufficient independent risk management and assurance be added to section 14 of the Local Government Act.

Mayoral powers

3. That the purpose and effect of section 41A of the Local Government Act be reviewed.

Elected member conduct

4. That the Government review the effectiveness of local authority codes of conduct as a means of supporting good governance behaviours.

Chief Executive Contracts

5. That clause 34(1) – 34(6) of Schedule Seven of the Local Government Act be repealed and replaced with provisions that:
   (a) limit the term of a Chief Executive's contract to five years
   (b) allow a local authority to reappoint the incumbent for a further term of up to five years on completion of contract without readvertisement, or to advertise at its discretion
   (c) require the review of performance (under clause 35 of Schedule Seven) no less than six months before the completion of any term.

Remuneration and employment policy

6. That clause 36A, Schedule 7 of the Local Government Act be repealed in its entirety.

Cost-effectiveness reviews

7. That the statutory requirement to undertake reviews of the cost-effectiveness of service delivery be repealed.

Restrictions on service delivery options

8. That section 136 of the Local Government Act, which places restrictions on contracts for operating water services, be deleted. (This recommendation would apply if, and only if, water reforms do not proceed.)

9. That section 138 of the Local Government Act, which places restrictions on the disposal of parks, be deleted.

Community outcomes

10. That provisions governing the community outcomes process be repealed, depending on the progress of the Randerson Report recommendations around a Strategic Planning Act.

Financial and infrastructure strategies

11. That the financial strategy provisions of the Local Government Act be simplified to a statement of purpose, the limits on rates and debt, and a requirement to identify any factor that will have a significant financial impact during the life of the strategy.

12. That sections 101B(4)(c) and (d) relating to disclosures of the forecasting assumptions in an infrastructure strategy be repealed.

Mandatory measures of non-financial performance

13. That the existing rules prescribing mandatory measures of non-financial performance be revoked immediately.

14. That the power to make regulations specifying mandatory measures be repealed from the Local Government Act.

Funding impact statements

15. That the requirements to produce a funding impact statement (other than the elements describing the rating system) be revoked.

Fiscal prudence reporting

16. That the fiscal prudence reporting regulations be revoked.

17. That the power to make regulations specifying fiscal prudence benchmarks be repealed from the Local Government Act.

Contents of long-term Plans

18. That LTP disclosures of CCO information focus only on significant CCOs.

19. That disclosures covering policies on developing the capacity of Māori to contribute to decision-making, and local board funding policies, be moved from the long-term plan to the local governance statement.

20. That the requirement to include an explanation of any variations between the local authority's current Waste Management Plan and the LTP be deleted from the Local Government Act.

Audit of long-term plans

21. That the audit mandate for consultation documents and Long-Term Plans be reviewed to ensure auditors are not attesting to communication elements of the plan.

22. That the requirements for consultation documents be amended to require local authority's presentation of major matters to disclose only the reasonably practicable principal options as determined by the local authority on reasonable grounds.

Pre-election reports

23. That all local authorities be permitted to use annual plan estimates for the financial year preceding the election date in their pre-election reports.

Unfunded mandates reform

24. That the Commission consider an unfunded mandates statute modelled on the American basis, including an obligation to engage with the local government sector in identifying costs and options.

Development contributions

25. That regional councils be permitted access to development contributions where they can demonstrate a nexus between their services, capital expenditure and growth.

26. That the cap on reserve contributions be abolished.

27. That the law be amended to allow for recovery of development contributions on land that is not owned or controlled by the local authority.

28. That the Crown exemption from paying development contributions be removed.

29. That the legislation be clarified to provide that development contributions policy that applies for assessing contributions on certificates of acceptance is the policy in force when certificates are issued.

30. That the requirements for development contributions policies be simplified by requiring local authorities to include a summary of the growth-related aspects of the revenue and financing policies as opposed to the full analysis.

31. That the Local Government Act be amended to clarify any refunds on subdivision consents should be made to the landowner.

32. That section 150 of the Local Government Act be amended to clarify that cost of assessing and issuing DC notices can be recovered via fees and charges.

Alcohol bylaws

33. That sections 147 -147C of the Local Government Act be reviewed for clarity and to ensure that the tests for justifying such a bylaw can realistically be met.

Expiring bylaws

34. That sections 160 and 160A of the Local Government Act be reviewed for clarity of intent.

Infringement offence regulations

35. That the Department of Internal Affairs develop infringement regulations. This may require an amendment to section 259 of the Local Government Act to clarify that a category approach to infringement offences is within the regulation making power**.**

Part Two: Amendments to the Local Electoral Act 2002 and to Related Legislation and Regulations

Taituarā recommends:

District Health Board elections

36. That the District Health Board elections be separated from the local election process. (This would apply if, and only if, the Government decided not to implement the Simpson review recommendations that the governing bodies of District Health Boards be entirely made up of representatives appointed by central government.)

Māori wards and constituencies

37. That the legislation for the creation of Māori wards and constituencies in local elections be aligned with that which applies to the creation of other wards and constituencies. This includes the abolition of a poll and the extension of appellate rights.

Ratepayer franchise

38. That the Local Electoral Act and Local Electoral Regulations 2001 be amended to allow for continuous enrolment on the ratepayer electoral franchise.

Election period

39. That a definition of election period be added to section 5 of the Local Electoral Act and used across the provisions that govern donations, expenses, and advertising.

Proof of eligibility

40. That section 55 of the Local Electoral Act be amended to require candidates to furnish proof of New Zealand citizenship.

Campaign expenditure limits

41. That the Local Electoral Act be amended to allow setting of campaign expenditure limits by regulation.

Electoral signage

42. That the Local Electoral Act be amended to allow setting of regulations governing electoral signage, and that such regulations be brought forward in advance of the 2022 elections.

Social media

43. That, in accordance with practice in Parliamentary elections:

(a) the definition of advertisement in the Local Electoral Act be amended to include advertisements in any medium

(b) the expression of personal political views on the internet be expressly excluded from the definition of electoral advertisement.

Transmission of Nominating Documents

44. That the Local Electoral Act be amended to allow for electronic transmission of nomination forms.

Order of candidate names

45. That the Local Electoral Act be amended to require local authorities to print the ballot paper using random ordering of candidate names.

Access to the supplementary roll

46. That the Electoral Act 1993 be amended to require supply of a supplementary roll before polling day.

47. That local authorities should be provided with access to the deletions file.

Hours of voting

48. That the Local Electoral Regulations clarify the hours that booths may be open on days before election day (and that at least one of these allow for close of voting for the day after 5pm).

49. That the Local Electoral Act and Regulations be amended to allow for an explicit time at which polling closes in elections run using a combination of postal and booth voting.

Special voting

50. That the content of the special voting regulations be reviewed to ensure they operate as simply as is consistent with the principles of the Local Electoral Act.

Replacement ordinary votes

51. That the Local Electoral Regulations be amended to explicitly allow Electoral Officers to issue a replacement ordinary vote on request by those who have not already voted.

Electronic transmission of votes from overseas

52. That the Local Electoral Act be amended to allow electronic transmission of special votes to and from voters who will be overseas during the election period.

Access to the unpublished roll

53. That the Electoral Act 1993 be amended to provide electoral officers with access to the unpublished roll.

Tied elections

54. That further consideration be given to an amendment to the Local Electoral Act that provides for a mandatory judicial recount before any tied result proceeds to decision by lot.

Part Three: Amendments to other legislation in the local government portfolio

Taituarā recommends:

Local Authority Members' Interest Act 1968

55. That the Local Authority Members' Interests Act 1968 receive a first principles review.

Rates exemptions

56. That the present set of rating exemptions in the Local Government (Rating) Act 2002 be removed *in toto*.

Mandatory 50 per cent rates remissions

57. That the present set of mandatory 50 per cent rates remissions in the Local Government (Rating) Act 2002 be removed *in toto*.

Value capture

58. That the Department, Taituarā and Local Government New Zealand develop a proposal for adding a value capture tool to the Local Government (Rating) Act 2002.

Volumetric charging for wastewater disposal

59. That section 19 of the Local Government (Rating) Act 2002 be amended to allow wastewater disposal to be rated for based on either the volume of water consumed or the volume of wastewater leaving a property.

Supply of rating information

60. That the Local Government (Rating) Act 2002 be amended by requiring ratepayer disclosure of all information relevant to the setting of rates and amending requirements to refund overpaid rates where the ratepayer has failed to notify a local authority of a change in a reasonable period of time.

Rates Rebates Act 1973

61. That the coverage of the Rates Rebate Act 1973 be extended to
    a. water and wastewater charges levied by CCO and any charges set by any new three waters entities
    b. charges set by Kāinga Ora using the authority of the Urban Development Act and
    c. charges set by any special purpose vehicles created under the authority of the Infrastructure Funding and Financing Act.

Taumata Arowai – the Water Services Regulator Act 2020

62. That section 12 of Taumata Arowai – the Water Services Regulator Act 2020 be amended to add knowledge of the operation of water services as one of the skill sets for the Board of Taumata Arowai.

Dog Control Act 1996

63. That the provisions of the Dog Control Act 1996 be reviewed to enable a new registration process for dogs utilising the National Dog Database as the authoritative source of information.

Part One Amendments to the Local Government Act 2002 and Regulations

Introduction to Part One

In this part we list our proposed amendments to the Local Government Act 2002. We have grouped the proposed amendments into the following core topic areas:

- governance (quorums, risk and assurance, Mayoral powers)
- employment (Chief Executive contracts, remuneration and employment policies)
- service delivery (service delivery reviews, disposal of assets)
- accountability (community outcomes, contents of financial and infrastructure strategies, mandatory measures, financial prudence regulations, content of long-term plans, audit)
- funding (unfunded mandates, development contributions) and
- bylaws.

While a separate issue, this is an appropriate place to note that there are provisions from the Local Government Act 1974 that still exist. Most relate to specific functions such as roads and land drainage. Another core group relate to the Local Authorities Petroleum Tax (not to be confused with fuel excise).

Most of these provisions still appear to have a purpose and are still needed, but we have wondered whether these might be better transferred to the functional legislation. We make no recommendation, but signal that this is something that might be undertaken as a more general modernisation of the legislation.

Governance Matters

Quorums

Local authorities have the option of allowing remote attendance (attendance by visual or audio-visual link) at council meetings, providing that standing orders allow for it, and members are able to see and hear each other. Elected members attending in this way do not, in normal circumstances, count for establishing a quorum (i.e. a quorum must be physically present).

One of the provisions introduced as a temporary measure on the move to a level four alert was the temporary suspension of the requirement that members be physically present to count for a quorum. This ensured councils could continue to meet while an Epidemic Preparedness Notice remains in force.

We have been approached regarding the possibility of extending these provisions on a permanent basis. This would certainly assist those regional councils and some of the larger rural councils (such as Gisborne or Southland districts) where elected members face 2-2.5 hour trips each way for a council meeting and provide greater representation for rural New Zealand.

On the other hand, there are advantages in being physically present e.g. it is easier to build teams face-to-face and attendees can pick up on non-verbal cues from submitters to hearings. It might also be argued that allowing unfettered attendance might discourage councils from making best use of meeting time.

While we favour making the change permanent, this should not be unfettered. There should be safeguards for example, that members must physically attend a minimum number of meetings, or that links must be audio-visual.

Recommendation 1: Quorums

That the temporary suspension of the requirements that elected members be physically present in meetings be made permanent, subject to appropriate safeguards.

Risk and assurance

The recent Productivity Commission report highlighted the importance that local authorities pay sufficient attention to and have good capabilities in audit and risk management at the governance level. We agree that lack of sophistication in these areas is a common finding of the so-called COUNCILMARK reviews of councils – on occasion this manifests as risk aversion, at other times the opposite.

We understand all councils now have a specific committee with oversight of these functions – usually a specific committee of council. Many, though not all, have an independent chair or independent member. Of course, this is no guarantee that councils will take such steps in future.

While we do not favour legislation setting out committee structures and membership, we would favour providing better incentives for councils to provide a sufficient level of independent risk and assurance. Less prescriptive options might be to elevate the importance of risk and assurance to one of the fundamental operating principles as set out in section 14 of the Act (alongside sustainable development, asset management, open and transparent conduct of business). Alternatively, risk and assurance might be woven into the fabric of governance through its incorporation into the principles of governance set out in section 39 of the Local Government Act. Our suggestion is that risk and assurance go beyond governance and therefore should be incorporated into section 14.

Recommendation 2: Risk and assurance

That a principle requiring councils to provide for sufficient independent risk management and assurance be added to section 14 of the Local Government Act 2002.

Mayoral Powers

In most cases, the present set of Mayoral powers falls between the full executive Mayoral model (for example, the Mayor of London) and a disempowered Mayoralty role. We replicate this section in its entirety below:

41A Role and powers of mayors

(1) The role of a mayor is to provide leadership to—
(a) the other members of the territorial authority; and
(b) the people in the district of the territorial authority.

(2) Without limiting subsection (1), it is the role of a mayor to lead the development of the territorial authority's plans (including the long-term plan and the annual plan), policies, and budgets for consideration by the members of the territorial authority.

(3) For the purposes of subsections (1) and (2), a mayor has the following powers:

- *(a) to appoint the deputy mayor:*
- *(b) to establish committees of the territorial authority:*
- *(c) to appoint the chairperson of each committee established under paragraph (b), and, for that purpose, a mayor—*
  - *(i) may make the appointment before the other members of the committee are determined; and*
  - *(ii) may appoint himself or herself.*

(4) However, nothing in subsection (3) limits or prevents a territorial authority from—

- *(a) removing, in accordance with clause 18 of Schedule 7, a deputy mayor appointed by the mayor under subsection (3)(a); or*
- *(b) discharging or reconstituting, in accordance with clause 30 of Schedule 7, a committee established by the mayor under subsection (3)(b); or*
- *(c) appointing, in accordance with clause 30 of Schedule 7, 1 or more committees in addition to any established by the mayor under subsection (3)(b); or*
- *(d) discharging, in accordance with clause 31 of Schedule 7, a chairperson appointed by the mayor under subsection (3)(c).*

(5) A mayor is a member of each committee of a territorial authority.

(6) To avoid doubt, a mayor must not delegate any of his or her powers under subsection

(7) To avoid doubt, —

- *(a) clause 17(1) of Schedule 7 does not apply to the election of a deputy mayor of a territorial authority unless the mayor of the territorial authority declines to exercise the power in subsection (3)(a):*
- *(b) clauses 25 and 26(3) of Schedule 7 do not apply to the appointment of the chairperson of a committee of a territorial authority established under subsection (3)(b) unless the mayor of the territorial authority declines to exercise the power in subsection (3)(c) in respect of that committee.*

This variation on the executive Mayor model was first introduced into Auckland as part of the Auckland amalgamation (and importantly the Mayor was provided with a statutory minimum budget with which to establish an office and purchase independent advice) and introduced into the rest of the country in 2012.

Without commenting on the merits of the Executive Mayor model, we observe that the model described in section 41A is neither one thing nor the other. The Mayor is still very much 'first among equals' and the exercise of powers is subject to some important checks and balances.

This mismatch between the purpose and the detail is the source of much tension within local authorities. To give some examples:

- what does it mean to provide leadership to the members of the territorial authority? We are aware of public comments from a handful of Mayors that imply they interpret the provision as implying a power to direct or, on occasion, to act in their own right
- in a similar vein, what does leading the development of plans, policies and budgets mean? We understand this was intended to be the means through which the Mayor would give effect to any policy commitments made during election campaigns etc. Yet this provision makes it clear that the Mayor cannot act unilaterally and that all these documents ultimately require the approval of council
- the language suggests leading development of plans and policies is a requirement. In practice most choose to exercise this power in limited ways, over the things they see as a priority. Few Mayors have any budget for independent advice. Only the Mayor of Auckland has a guaranteed budget, other Mayors are dependent on council voting them budgetary support
- the reference to leading development of budgets has encouraged some Mayors to involve themselves in operational matters
- misunderstanding of the limits on the Mayor's ability to appoint the Deputy Mayor and chairs of committees has been a source of friction in some local authorities. While it would not be fair to say that the use of these powers was the sole cause of tension in some councils, it falls into the category of matters that have 'not helped'.

In short, we see little evidence that the Mayoral model is operating in the way it was intended to operate. In honesty, we have never been clear exactly what the problem or issue definition drove the move to this model. Councils are generally at their best when mayors and the other elected members work collaboratively, rather than one party acting (or attempting to act) unilaterally.

We submit the purpose and effect of this section should be reviewed.

Recommendation 3: Mayoral powers

That the purpose and effect of section 41A of the Local Government Act 2002 be reviewed.

Codes of Conduct

All local authorities are required to have a code of conduct that sets out expectations adopted by the local authority about the manner in which members "may conduct themselves while acting in their capacity as members, including behaviour toward one another, staff, and the public and disclosure of information."[1]

In our first briefing, Managing for Community Wellbeing, we observed that *"Enforcement of these provisions of codes is left to councils – including the investigation and resolution of any complaint. There is no statutory sanction for a breach (other than those that are criminal offences) leaving councils to apply sanctions such as removal from a committee etc.*

These provisions were grounded in the view the then Minister had that elected members accountability was to the community through the ballot box. Having advised councils on codes of conduct and observed their operation for almost 20 years we find that codes lack genuine enforcement 'teeth' that can either themselves been seen as politically motivated or on occasion trivial or derisory (the literal 'wet bus ticket').

Collegiality and respect are critical to the successful operation of councils. Processes for enforcing codes do not often provide a vehicle for rebuilding trust and a sense of teamwork among elected members, or for supporting a culture of free, frank and fearless advice amongst staff."

We reiterate the view in that briefing that there needs to be a review of all the legislative provisions governing elected member behaviour – both here and in the Local Authority Members' Interests Act.

Recommendation 4: Elected member conduct

That the Government review the effectiveness of local authority codes of conduct as a means of supporting good governance behaviours.

[1] Clause 15, Schedule Seven, Local Government Act 2002.

Employment Matters

Chief Executive Contracts

Clause 33 to 35 of Schedule Seven regulate the employment of Chief Executives. Like a departmental Chief Executive, a local authority Chief Executive is appointed for a maximum term of five years. Unlike a departmental Chief Executive, the council cannot reappoint a Chief Executive without advertising, though it can provide a one-off extension to a contract for up to two years. No less than six months out from the completion of a five-year term the council must complete a review of the Chief Executive's employment including an assessment of performance and the incumbent's skills and attributes.

These provisions ensure that Chief Executives have no expectation that, all other things being equal, a failure to reappoint on completion of a term would give grounds for a personal grievance under employment legislation. We submit, however, that clause 34 in its entirety is overly prescriptive and that all that is required for that purpose are clauses 34(7) and 35 which requires a review of the incumbent's performance and a determination whether the incumbents skills and attributes are what the council needs moving forward.

A requirement to readvertise can make Chief Executives risk adverse and discourage "free and frank" advice and innovation and make them very conscious about offending political groups or factions in council. Local authority Chief Executives are in a very different position from a Departmental Chief Executive, in that their political masters are their employers, there is no State Services Commissioner to intercede and for example, remind elected members that advice should be politically neutral.

Increased job uncertainty may decrease the number of qualified and experienced persons prepared to apply for a Chief Executive position. In some small rural local authorities, it is difficult to attract and retain managers, and the fixed term regime is a further disincentive to apply. Economic theory tells us that uncertainties of this nature will be reflected in the salary demands as a 'risk premium' is introduced into the process.

The nature of the employment process also makes it more difficult to retain Chief Executives. In the last five years 51 of the 78 local authorities have changed their Chief Executives – almost two-thirds. The loss of expertise is significant.

Quite apart from these factors, the requirement to readvertise creates an additional (and often unnecessary) cost on communities. A council that does nothing other than advertise can expect a cost in the low five figures, a council that gets outside

assistance with a search can expect a bill of around $50,000 (a very significant impost for a smaller community).

This provision is inconsistent with the general intent of the Local Government Act. Local authorities are empowered to promote community wellbeing, and in pursuit of that purpose make day to day decisions involving millions of dollars (including powers to tax, borrow, build, or acquire assets). How does this sit with a provision that effectively says that they cannot be trusted to assess their Chief Executive's performance and attributes?

Recommendation 5: Chief Executive contracts

That clause 34(1) – 34(6) of Schedule Seven of the Local Government Act 2002 be repealed and replaced with provisions that:

(a) limit the term of a Chief Executive's contract to five years

(b) allow a local authority to reappoint the incumbent for a further term of up to five years on completion of contract without readvertisement, or to advertise at its discretion

(c) require the review of performance (under clause 35 of Schedule Seven) no less than six months before the completion of any term.

Remuneration and Employment Policy

The Better Local Government reforms of 2012 provided local authorities with the powers to set a policy on remuneration and staffing.

The 'case' for this reform was based on an assertion that local government salaries had increased at more than twice the rate of salaries elsewhere in the economy. We have never been able to substantiate this claim from any independent source and note this claim appeared only in the Cabinet paper, and not in any document that officials prepared. Our analysis based on the Labour Cost Index suggested that the movements in all salary and wage costs over the last ten years have not been greatly different – 21 per cent in local government and 18 per cent in central government.[2]

Our understanding was that this policy was intended to operate in a similar manner to that which applies in the civil service. That is to say that the Government of the

[2] Statistics New Zealand, Labour Cost Index, June 2020.

day may specify a total 'cap' on the number of employees in the core public service and a total limit on civil service remuneration**.**

We do not believe that the policy intent has been captured in the legislation. As currently worded the provision is vague

A local authority may adopt a policy that sets out the policies of the local authority in relation to—
(a) employee staffing levels; and
(b) the remuneration of employees[3]

Worded in this way, this appears to allow the council to adopt policies that sit below the 'whole of council' level. This invites elected members to attempt to specify the number of employees who work in each group of council (e.g. there will be no more than *x* rates clerks, or *z* librarians) or specify remuneration of individual employees. We have been aware of circumstances where elected members have, or in one case are, threatening to use these provisions to set the salaries of the second-tier management.

We submit that local authorities already set a limit on spending on remuneration (and other inputs for that matter) in their long-term and annual plans. These plans are subject to consultation (unlike the remuneration policy). We add that specifying staff numbers is a very blunt and largely ineffective way of controlling inputs as officials may turn to consultants to meet council expectations, at greater cost. Officials did identify this risk in the Regulatory Impact Statement that accompanied the Bill.

To the extent that elected members can exercise a right of veto over staffing and employment decisions, this will blur the line between governance and management established in the reforms of 1989. The "second-order impacts" of this policy setting are likely to include more difficulty in attracting quality applicants for Chief Executive, and an increase in employment disputes.

Recommendation 6: Remuneration and employment policy

That clause 36A, Schedule 7 of the Local Government Act 2002 be repealed in its entirety.

[3] Clause 36A, Schedule 7 of the Local Government Act 2002.

Service Delivery

Cost-effectiveness reviews

The 2014 reforms to the Local Government Act inserted a requirement to review the cost-effectiveness of current arrangements for meeting the needs of communities within its district or region for good-quality local infrastructure, local public services, and performance of regulatory functions. These are colloquially referred to as 'section 17A reviews.

This amendment was intended to provide local authorities with a legislative direction to review their service delivery arrangements to find efficiency gains. No reasonable person can argue that bodies that spend public money should not be looking for opportunities to deliver services more efficiently.

This is one of the reasons why shared capability arrangements are so prevalent in the sector. The average local authority is involved in six of these and some report being involved in as many as 50. It is a major driver behind the move to make more services available online and undertake improvements to other business processes. We have yet to see the organisational restructure that has not cited efficiency gains as a motivating factor.

We agree that local authorities should review the cost-effectiveness of their service delivery arrangements from time to time. However, the section 17A process is specified in a very detailed manner including when reviews are undertaken, what options must be considered, and what happens if the review determines that governance and delivery should be separated.

In specifying to this level of detail the Act has created a potential procedural tripwire for local authorities and encouraged reviewing for its own sake. We do not think either was intended as both are the very antithesis of the outcome this provision was attempting to generate.

We submit that the principles of local government in section 14 of the Act provide local authorities with legislative signals that they should be looking for opportunities to improve. Section 14(1)(e) states that a local authority should *actively seek to collaborate and co-operate with other local authorities and bodies to improve the effectiveness and efficiency with which it achieves its identified priorities and desired outcome*. Reviews of this nature *ensure prudent stewardship and the efficient and effective use of* (the local authority's) *resources* as per section 14(1)(g).

An alternative option might be to retain the requirement but remove much of the overspecification. Undertaking a review is a 'decision' for the purpose of section 78.

Local authorities are under an obligation to identify and consider the reasonably practicable options. All that would be necessary is:

(a) a requirement to review services where the local authority considers that the benefits of a review would outweigh the costs of the review
(b) a requirement to consider the costs and benefits of collaborating with other local authorities to undertake the review.

Recommendation 7: Cost-effectiveness reviews

That the statutory requirement to undertake reviews of the cost-effectiveness of service delivery be repealed.

Restrictions on service delivery options

Some parts of the Local Government Act are appear grounded in the notion that service delivery through public means is important for its own sake. In particular

- local authorities cannot sell water and wastewater assets or even enter into many types of alternative service delivery arrangements for these services (section 136)
- similarly, there are restrictions on the disposal of parks (section 138).

Section 136 limits contracts for delivery of water services to 35 years. This prohibition should be removed, and discretion left to local authorities and their communities.

Taituarā is both aware of, and sympathetic to, concerns that water is more than an economic good. We submit that in its present form, the Act recognises this by requiring local authorities to retain:

- legal responsibility for the service (for example, a local authority could be held legally liable for an outbreak of a waterborne illness in a service provided by a contract) and
- responsibility for the pricing and policy with respect to the services (though the latter could be clarified).

Taituarā considers that provisions of this nature are inconsistent with the remainder of the Act. These provisions appear to confuse "means" with "ends". They effectively

place barriers in the way of any alternatives other than conventional local authority delivery (shared services, public private partnerships, and the like) and therefore impede innovation and the seeking of cost-efficiencies. The provisions also run counter to the "outcome" focus that central government wants to instil into its own activities, and that the Act instils into local government.

Local authorities are already under obligations to:

- give effect to their priorities in an effective and efficient manner
- exercise prudent stewardship and effective and efficient use of resources and
- consider the foreseeable future needs of future generations.

It is, therefore, questionable whether there is a need for prescription where local authorities are already obligated to consider the impact of delivery decisions.

Recommendations 8 and 9: Restrictions on service delivery options

8. That section 136 of the Local Government Act, which places restrictions on contracts for operating water services, be deleted. (This recommendation would apply if, and only if, water reforms do not proceed.)

9. That section 138 of the Local Government Act, which places restrictions on the disposal of parks, be deleted.

Accountability

Community outcomes

The Randerson Report into the Resource Management Act recommended that Parliament pass a Strategic Planning Act. Such an Act would require that these strategies set long-term objectives for urban growth and land use change, responding to climate change, and identifying areas that are inappropriate to develop.

Managing for Community Well-being advocated for a spatial plan along the lines of the Local Government (Auckland Council) Amendment Act 2009. Such a plan provides the vehicle for local and central government, the private sector, the voluntary sector, and the wider community to engage in real community planning.

By which we mean determining an overall direction for the community and what each party can do to bring it about. This is an exciting opportunity to, for example, empower communities with a greater say in service design and delivery at the local level.

The plan would serve as the means for integrating all planning within the community – if appropriate attention is given to the legislative linkages between this and other planning. That is, the spatial plan would provide an overall direction for documents such as the present-day district plan, land transport planning and (of course) the LTP. The spatial plan might then replace elements such as the community outcomes process, and the LTP becomes the device for marrying the spatial plan and more detailed service planning.

Recommendation 10: Community outcomes

That provisions governing the community outcomes process be repealed, depending on the progress of the Randerson Report recommendations around a Strategic Planning Act.

Financial and infrastructure strategies

Taituarā has long supported the requirements on local authorities to prepare and adopt financial and infrastructure strategies. The former evolved out of good practice advice first provided to the sector in 2008.

A financial strategy is intended as a presentation of the key financial issues and challenges and an opportunity to set an overall direction for how these are managed. Done well, a financial strategy is a device for communicating harsh realities to the public and helping set priorities.

The legislation as it stands does not necessarily support this objective. There are several mandatory disclosures rather than a simple purpose statement. The risks with over specifying the financial strategy are that

- local authorities treat the list as exhaustive and miss something important (although audit mitigates this risk somewhat) or
- that some councils may not find the list relevant to their business.

We consider that the financial strategy provision might be better left at a statement of purpose and a requirement to disclose any factor that will have a significant

financial impact during the life of the strategy. The above discussion leads to a provision that might look something like this:

A financial strategy adopted under this session must include:

a) a statement of the factors to have a significant financial impact on the local authority and its ability to meet the levels of service indicated in its long-term plan

b) a statement of the local authority's

i) quantified limits on rates increases and borrowing expected

ii) assessment of ability to meet the levels of service indicated in the long-term plan and meet any additional demands for services with those limits.

The content of infrastructure strategies (section 101B) is also quite extensively prescribed. This is more appropriate with an infrastructure strategy as the range of challenges that need consideration is wider and good practice is still evolving.

However, there is one area where the required disclosures overlap with other mandatory disclosures in the LTP. Section 101B(4)(c) and (d) require that a local authority disclose the significant forecasting assumptions used to prepare the strategy. This includes the asset lifecycle, growth and demand assumptions, and any assumed changes in levels of service. Further disclosures focus on the degree of risk with these assumptions.

We agree that these are critical assumptions – an LTP without these assumptions would simply lack any real credibility. However, the disclosure largely replicates other requirements elsewhere in the Act – especially clause 17 of Schedule 10 (which also covers forecasting assumptions but applies to the LTP as a whole). We see no need to have both.

Recommendations 11 and 12: Financial and infrastructure strategies

11. That the financial strategy provisions of the Local Government Act be simplified to a statement of purpose, the limits on rates and debt, and a requirement to identify any factor that will have a significant financial impact during the life of the strategy.

12. That sections 101B(4)(c) and (d) relating to disclosures of the forecasting assumptions in an infrastructure strategy be repealed.

Mandatory measures of non-financial performance

Local authorities are required to report against a set of 19 measures of non-financial performance across five groups of activities relating to network infrastructure (three waters, flood control and roads and footpaths). The Local Government Act requires the Secretary for Local Government to:

(a) consider whether an existing performance measure is suitable for the purpose; and

(b) have regard to whether a performance measure—

(i) measures the level of service for a major aspect of the group of activities; and

(ii) addresses an aspect of the service that is of widespread interest in the communities to which a service in relation to the group of activities is provided; and

(iii) contributes to the effective and efficient management of the group of activities.

We suspect that the current set of measures fall below these standards. Some measures such as *"the per centage of the sealed local road network that is resurfaced"* make a dubious contribution to the effective and efficient management of an activity in that they incentivise activity for activity's sake. Others, such as various measures of customer response time (which we agree is important) require investment in systems development.[4] Others appear to be simple binary statements such as

"The major flood protection and control works that are maintained, repaired and renewed to the key standards defined in the local authority's relevant planning documents (such as its activity management plan, asset management plan, annual works program or long-term plan)."[5]

We acknowledge our concerns are shared both within the sector and by other agencies, for example the Office of the Auditor-General remarked that *"(it) has previously remarked that some of the mandatory performance measures do not*

[4] As a result, several local authorities receive modified annual report opinions because they have not, as yet, been able to justify the investment in systems to their communities.

[5] Levels of service for flood and river control are notoriously difficult to define and measure – if a level of service is not met then the local authority and community might have higher priorities to concern themselves with. Taituarā advised the Department to leave a requirement to set performance measures for flood and river control out of the legislation.

provide a meaningful indication of a council's performance. In our view, it is timely for the Department of Internal Affairs review the current suite … "[6]

The then Minister of Local Government (Hon Rodney Hide) stated that the measures were intended to "encourage a greater focus on core services". That is to say that by setting up a mandatory regime that covered some, but not all, services the Minister's intent was to direct investment to some activities deemed core and not others.

The then Associate Minister of Local Government responsible for developing the authorising legislation saw these as a means of identifying best practice and providing communities with a common language for expressing levels of service. In fact there's been a marked lack of interest on the part of local communities in the measures – at the time of writing we are unaware of any ratepayer or sector group that has shown any interest in the measures or in compiling any 'league table' or 'composite index of performance'.

We see little value in the current suite and would recommend that the current rules be repealed.

This is not to say that the setting of levels of service, and the associated performance measures and targets is not a critical part of good local governance, or that robust comparisons with others are not a valuable information source. Our own guidance *Your Side of the Deal* highlights both. We consider that a lot more can be done to encourage the sector to select a few relevant, customer-focussed measures.

Recommendations 13 and 14: Mandatory measures of non-financial performance

13. That the existing rules prescribing mandatory measures of non-financial performance be revoked immediately.

14. That the power to make regulations specifying mandatory measures of non-financial performance be repealed from the Local Government Act 2002.

[6] Office of the Auditor-General (2019), *Matters Arising from the 2018-28 Local Government Long-Term Plans,* pages 24.

Funding impact statements

Local authorities are required to produce a financial statement that is unique to local government – the funding impact statement (FIS). The FIS applies at two levels:

- *the whole-of-council FIS* – which is in two parts: a disclosure of how rates are set and assessed (we support this and have issued much guidance about doing this well) and a statement showing funds moving into and out of the local authority and
- *the group of activity FIS* – a statement showing funds moving into and out of each group of activities.

The financial components of the FIS are additional to the statements required under Generally Accepted Accounting Practice (GAAP). Presentation of the FIS is regulated under the Local Government Financial Reporting and Prudence Regulations 2014. These contain a sample of the statement for each of the whole of council and group level FIS – no variation in presentation is permitted.

The FIS differs from GAAP statements in two key respects:

- it is intended to deal only with cash items – transactions such as the vesting of assets (especially common in growth councils) or revaluations are excluded
- a whole of council FIS must balance.

The FIS was introduced on the rationale that *"most ratepayers do not understand the principles of accrual accounting and therefore find council accounts incomprehensible"*. We are unconvinced that having two sets of financial information each prepared on a slightly different basis provides transparency for the reader.

Local authority finance managers and LTP project managers report that there has been no lesser or greater level of interest in financial information because of producing the FIS.

We are aware that some local authorities do find the cash orientation of the FIS useful and have built their reporting to elected members around the FIS. But in general, this appears to be a low value financial disclosure.

Recommendation 15: Funding impact statements

That the requirements to produce a funding impact statement (other than the elements describing the rating system) be revoked.

Fiscal prudence reporting

The Local Government Financial Reporting and Prudence Regulations also introduced a second element, the so-called financial prudence benchmarks. These were designed to:

"encourage greater financial discipline in the local government sector and will meet concerns about rising rates and council debt. They will foster a culture of continuous improvement across the sector and showcase best practice and excellence in local authority financial management. The regulations will also provide information about councils' financial health. They will make it easier for ratepayers to assess their council's financial state and will promote better financial decision making." [7]

Considering the whole set, it is difficult to see how the benchmarks meet the above stated objectives:

- there is no linkage to any measures of service or service improvement i.e. they are financial indicators only
- the so-called 'rates affordability' and 'debt affordability' benchmarks are nothing more than whether the local authority met the limits on rates and debt that were set in their own financial strategy. That is to say that the benchmarks are self-determined. These may send perverse incentives i.e. knowing that a reporting requirement exists may encourage local authorities to leave more headroom, undermining the intent that these limits act as a strategic control[8]
- the inclusions and exclusions from some may not be readily understandable to many of the public. For example, the debt servicing benchmark excludes the

[7] Department of Internal Affairs, Finance Prudence Regulations, last retrieved from https://www.dia.govt.nz/Implementing-the-2012-Amendment-Act#implementing2 on 17 July 2019.

[8] The Cabinet papers that sought authority for these benchmarks also discuss the Department's intent to collect information on two *indicators* (emphasis supplied) of affordability: rates per rating unit and net debt per rating unit. While imperfect, these probably bear a closer relationship to affordability. As far as we are aware neither has ever been collected by the Department.

following items from the definition of revenue: development contributions, financial contributions, vested assets, gains on derivative financial instruments, and revaluations of property, plant, or equipment. All those make sense to a person with some knowledge of finance but limit this measure's usefulness to the layperson.

Recommendations 16 and 17: Fiscal prudence reporting

16. That the fiscal prudence reporting regulations be revoked.

17. That the power to make regulations specifying fiscal prudence benchmarks be repealed from the Local Government Act 2002.

Content of long-term plans

Council Controlled Organisation (CCO) information

Local authorities must disclose details about their Council-Controlled Organisations including:

- the name of the CCO and any of its subsidiaries
- the local authority's significant policies and objectives with respect to the ownership and control of the organisation
- the nature and scope of the activities the CCO provides
- the performance measures and targets that will be used to assess the CCO's performance.

The disclosure requirement applies regardless of the actual size or organisational form of the CCO – so a holding company managing millions of dollars in assets is subject to the same disclosures as a Santa Parade Trust that might only have income of a few thousand dollars.

The rationale for the disclosure requirements is that CCOs can be responsible for delivering a significant activity, managing a strategic asset, or receiving public money via the local authority. In each of these cases the public has a right to know what the organisation concerned is doing and why.

We are inclined to agree with this in concept but consider that a strategic LTP could omit some of the lower level CCOs without much loss of transparency. Local

authorities could be required to perform an assessment of the significance of their CCOs and focus their disclosures on only those deemed significant. We suggest the following test as a starting point for discussion:[9]

"A significant CCO is a CCO which:

a) delivers one of the mandatory groups of activity on behalf of council or

b) delivers any other significant activity on behalf of council or

c) manages a strategic asset on behalf of the council, or an organisation that manages an organisation that manages such an asset or

d) receives a significant level of funding from the local authority."

Policies on building the capacity of Māori

An LTP must set out details of any steps that local authorities are proposing to take that would build the capacity of Māori to contribute to the local authority's decision-making processes.

We agree that local authorities should consider whether they can take any steps to promote the capacity of Māori to contribute to their decision-making processes. In areas, such as the Waikato, where co-governance arrangements exist – the matters covered in this policy may well be a strategic issue.

We consider that the requirement to have a policy should be retained, including an obligation to consult. The matters covered in this policy align more closely with the content of a local governance statement, and in our view this is where the obligation to disclose should be placed, though nothing prevents a local authority from retaining this policy in its LTP.

Waste management plans and the LTP

Local authorities must include a statement explaining any variations between their current Waste Management Plans in the LTP. While the Waste Management Plan is an important document – it is no more preeminent than other statutory planning instruments such as a District Plan. We see no reason why detail about the Waste Management Plan is of such importance that it deserves to be included in an LTP when many other documents are not. This requirement should be deleted.

[9] The definition of "significant" CCO is will need to align with the definition of substantive CCO for the purposes of the Auckland legislation. Our intent is that these bodies would be regarded as significant.

Local board funding policies

Local board funding policies describes how local authorities approach the provision of staff resources to any local boards operating in their area. Currently local boards only exist in a single authority – the Auckland Council. Our read of these policies is that they are mechanical, and governance related and would be better placed in the local governance statement.

Recommendations 18 to 20: Contents of long-term plans

18. That LTP disclosures of CCO information focus only on significant CCOs.

19. That disclosures covering policies on developing the capacity of Māori to contribute to decision-making, and local board funding policies be moved from the long-term plan to the local governance statement.

20. That the requirement to include an explanation of any variations between of the local authority's current Waste Management Plan and the LTP be deleted from the Local Government Act 2002.

Audit of long-term plans

All LTPs must receive an audit opinion. This attests to two things:

1. the quality of the information and assumptions that have been used to prepare the consultation document or plan and
2. whether the document is fit for its intended statutory purpose. In the case of the consultation document the opinion attests to whether the document provides a basis for engaging the community on the major matters for inclusion in the LTP. In the case of the LTP itself it is an attest to the document being a basis for ongoing accountability to the community.

The requirement for an audit of long-term plans is intended as an assurance that plans were prepared using sound information and judgement. To that extent Taituarā supports the requirement to audit prospective financial information.

The LTP audit most readily achieves Parliament's intended purpose when auditors focus on the quality of the underpinning information and assumptions. The skill sets of most auditors sit well with a requirement to consider matters such as the

completeness and robustness of the underpinning information, the reasonableness of forecasting assumptions and the translation of each into a robust set of financial forecasts.

We are less convinced that auditors can reasonably attest to the engagement and communications aspects of an LTP. While the auditor has a role in ensuring information is presented in accordance with Generally Accepted Accounting Practice and with applicable regulations, we are unconvinced that the auditors' involvement in presentational matters adds much to the overall result. We understand that this this is a small component of the overall audit but is a source of concern to many in the sector.

Even the most experienced auditors occasionally fall into the trap of getting involved in issues around the presentation of information in an LTP (and not from the compliance standpoint). For example, we are aware of at least two local authorities that wished to disclose annual financial information in an infrastructure strategy for each of the 30 years, and were told they could not, despite this being both more transparent and a higher standard than the legislation requires. In another case we were once asked to provide a council with the 'pantone numbers' for the shades of green and red in the Financial Reporting and Prudence regulations because an auditor had told a local authority that their disclosure had to match the colours in the regulation exactly.

The consultation documents were introduced to provide a more focussed basis for consultation (by focussing on the major matters). The decision as to what is included in an LTP is a matter for the local authority to determine having had regard to its significance and engagement policy and the *importance of other matters to the community* (emphasis supplied). This is important because it establishes the primacy of a local authority's judgement in these matters. Auditors must take care that in suggesting some matter is or is not for inclusion in the CD, or that there are other options, they are not replacing their own judgement for that of the local authority.

We have received feedback from local authorities that wished to put an issue or matter in a CD and claim to have had to include options that may not truly have existed. This has included some cases where the auditor has a prescribed number of options – three. We consider that it would be a rare circumstance where there is only one option for resolving a major matter – generally there is at least a 'do it' or 'don't do it' choice. Level of service improvements may come in increments etc.

In the cases where there is only one principal option, we are uncertain that the matter sits well as an 'issue for consultation' and would therefore be included in a consultation document. We could see that an issue such as upgrading drinking water to meet an increased standard may have no reasonably practicable option (the

'don't do it' option leaves a local authority open to prosecution) but might then be presented as another matter of importance due to its financial significance.

We consider the legislation should refer to those options that are reasonably practicable in the local authority's judgement. Of course, there should be reasonable ground for such a judgement. This should not be a signal to skimp on generating and analysing reasonably practicable options!

Recommendations 21 and 22: Audit of long-term plans

21. That the audit mandate for consultation documents and long-term plans be reviewed to ensure auditors are not attesting to communication elements of the plan.

22. That the requirements for consultation documents be amended to require local authority's presentation of major matters to disclose only the reasonably practicable principal options as determined by the local authority on reasonable grounds.

Pre-election reports

The pre-election report (PER) is a document that was intended to put the financial stewardship of the outgoing local authority, and its key spending issues 'front and centre' in the election debates. The document contains:

- historic financial statements from annual reports (e.g. the pre-election reports released in 2022 will contain historic financial information for the 2019/20 and 2020/21 financial years). This data comes from annual reports
- an estimated financial outturn for the financial year preceding election year (that is the pre-election reports released in 2022 will have an estimated outturn for the 2021/22financial year)[10] [11]
- a report on the local authority's performance against the financial limits and targets set in its financial strategy

[10] Local authorities with a usually resident population of 20,000 or less have the option of substituting information from their annual plan. Taituarā's guide on PER recommends that local authorities that have this option make use of it.

[11] The local authority financial year ends on 30 June. With the due date for PER being two weeks before nomination day (i.e. usually at the end of July), there is no opportunity for local authorities to prepare actual information and get this audited.

- forecast financial LTP information for the three years following election year. A 2022 PER will contain forecast financial information for the 2022/23, 2023/24 and 2024/25 financial years
- information about the major projects planned for the three years following election year. This information comes from the local authority's LTP.

For the most part, the document draws together information that already exists into a single document. Few local authorities have identified significant issues with the production of PER, with few indicating that the requirement created significant additional costs for the local authority. The biggest concern that most express is around the requirement to include an unaudited estimate of the financial out-turn for the year prior to election year, especially as the actual outturn will be included in annual reports that are generally released in the weeks after local elections. Numbers can change significantly, if for example an asset value changes significantly, meaning there is the potential for misuse of information.

The PER does have benefits as a single 'source of truth' which local authorities can use as source material for their own information campaigns (including responding to any factual inaccuracies that come up during the campaign). The PER serves as a kind of 'quick reference guide' to key financial and non-financial information that an elector who intends to cast an informed vote could use. Taituarā does not consider the PER to be a particularly onerous or costly requirement, but a slight streamlining of the requirement to allow all local authorities to use the annual plan forecasts for the year preceding election year would reduce the cost still further. These numbers are used as the basis for setting rates so should be reliable.

Recommendation 23: Pre-election reports

That all local authorities be permitted to use annual plan estimates for the financial year preceding the election date in their pre-election reports.

Funding

Unfunded mandates

An unfunded mandate is a piece of legislation or regulation that imposes a duty or obligation without funding to meet the requirements.

It is true that local authorities have roles and responsibilities under more than (at last count) 160 pieces of legislation (not counting local Acts). But many of those are

obligations that are imposed across the economy such as the Health and Safety at Work Act 2015, the administration of the Goods and Services Tax Act 1986 etc. Others depend on the policy choices councils make for themselves, such as the Companies Act 1993 and the formation of corporate forms of CCOs.

It is also fair to say that some of the examples that appear on the sector's list of 'unfunded mandates' actually came from policy ideas promoted by the sector.

Examples include:

- the regulation of commercial sex premises (the Prostitution Reform Act 2003) – this came from a request from the sector to allow for district plans to set stronger controls on the location of brothels
- local alcohol policies under the Sale and Supply of Alcohol Act 2012
- development of class four gaming policies under the Gaming Act and
- the National Environmental Standards for Air Quality – this came from a request from the regional sector for more national direction on air quality.

Central government's record of consideration of the cost of such policy initiatives on local government is patchy at best. The Productivity Commission's report on Local Government Regulation it quoted a passage from a Taituarā submission to the effect that:

"… much of the debate about the performance of local authorities in their regulatory roles in New Zealand hinges on this accountability disconnect around the design of the regulatory frameworks. The incentives for central government to ensure that the legislated regulatory processes it designs are cost-effective and proportionate, are significantly weakened where it knows that the costs of administering the system will be collected through a fee levied by a local authority or through local rates because it knows that the public will see the local authority as the agency responsible for the level of those costs."[12]

The unfunded mandate debate has been had at one time or another in practically every democratic society. Overseas jurisdictions have taken various approaches to the issue:

- England historically sought to provide full compensation for the cost of additional functions to local government. We understand there were issues as to the robustness of the formula for determining compensation. It also appears

[12] Taituarā (2012), *Submission to the Productivity Commission to Local Government Regulation*, page 7 quoted in1 Productivity Commission (2013), *Local Government Regulation*, page 68.

that this approach was one of the first casualties of the austerity reforms of the Cameron government

- representatives of Australian federal, state and local government signed an Inter-Governmental Agreement to guide Relations Between the States and Territories, the Australian Government and Local Government which contains a clause that provides a non-binding statement that central government should consider the financial implications of devolution are taken into account). It reads

  "Where the Commonwealth or a State or Territory intends to impose a legislative or regulatory requirement specifically on local government for the provision of a service or function, subject to exceptional circumstances, it shall consult with the relevant peak local government representative body and ensure the financial implications and other impacts for local government are taken into account."

- The United States has a Federal law – the *Unfunded Mandates Reform Act 1995*. Where legislation or regulations contain a rule that could result in expenditure by state or local governments of $100 million or more in any given year, the rule must be accompanied by a statement that includes the legal authority for the rule, a cost-benefit assessment, a description of the macroeconomic effects that the mandate will likely have, and a summary of concerns from the state and local government and how they were addressed.[13] The responsible agency must choose the least-costly option that achieves the objective of the mandate, and must consult with elected officials of state and local governments. A 2015 Act – the *Unfunded Mandates and Information Transparency Act* further requires that the Congressional Budget Office independently cost each such unfunded mandate and compare the cost to the authorised level of funding.[14]

Evidence on the effectiveness of these initiatives is spotty but there are aspects of the Unfunded Mandates Reform Act that may go some way to improving the quality of regulation and the funding of local authorities. While this legislation codifies much of what we would expect to see in a regulatory impact statement, the advantage of legislation is that it cannot be set aside if a Minister does not agree with the costing, or rushed because mid-level managers in a government department are behind with other work.

[13] Aspects of this appear similar to a regulatory impact statement.

[14] Our understanding is this amendment forms part of the Congressional Budget Act 1974 – broadly speaking the United States Federal equivalent of the Public Finance Act.

Recommendation 24: Unfunded mandates reform

That the Commission consider an unfunded mandates statute modelled on the American basis, including an obligation to engage with the local government sector in identifying costs and options.

Development contributions

Section 198 of the LGA provides territorial authorities with the power to require development contributions to recoup the incremental costs that development poses for:

- network infrastructure (roads and footpaths and the three waters infrastructure) and
- community infrastructure.

Councils have chosen to apply development contributions because they consider that new developments should be required to pay for the new or upgraded infrastructure that councils must invest in, to meet the needs of that new development.

Regional council powers

Only territorial authorities and unitary councils can access development contributions powers.

The Act envisages that activities could be transferred between territorial and regional councils (and vice versa), indeed local authorities are actively encouraged to join forces to identify these opportunities. The lines between regional and territorial activity may "blur" in future. There is no difference between regional and territorial authorities with respect to the ability to own assets, including infrastructure.

Regional councils have powers to levy financial contributions under the Resource Management Act and use those powers to fund some of their capital expenditure. However, the powers are not sufficiently broad or relevant to be able to be used by regional councils to fund their growth-related capital expenditure.

Extending powers in this way would assist regional councils to meet their responsibilities under the financial management provisions of the LGA (Section 101).

These responsibilities require local authorities to have regard to a range of factors including the distribution of benefits between the community as a whole and any identifiable part of the community; and the extent to which the actions or the inactions of groups (or individuals) contribute to the need to undertake the activity. The absence of a power to charge development contributions prevents regional councils from considering whether new development should pay for a fair share of the new regional infrastructure (such as passenger transport) required to service that development.

Reserve contributions

Section 199 of the Act allows councils to levy developers for a contribution for the purposes of a reserve. Section 203 sets a maximum contribution of 7.5 per cent of the value of allotments created by a subdivision, or the value equivalent of 20 square metres of land for each additional household unit.

The artificial maximum set in Section 203(1) does not enable local authorities to collect sufficient reserve contributions to provide for the active and passive reserve needs of new residents into the future. The option offered in the Act does not work when there is a development that has no subdivision; then part (a) cannot apply or likewise with (b) it is not necessarily known at a subdivision stage how many household units would be constructed. Therefore, the option of "the greater of" cannot apply in practice.

There is no reason in principle why councils should not be able to determine (in consultation with their communities) appropriate contribution levels and levels of service for community infrastructure but not for reserves. Both activities are aimed at providing for social, environmental, and cultural well-being.

The 7.5 per cent/20m^2 formula in Section 203(1) has historically had the advantage of certainty, allowing developers to factor contribution levels into project costings. This certainty would still be maintained through development contributions for reserves, calculated in accordance with the Schedule 13 methodology, being specified in the schedule of development contributions under Section 203 (1).

Removal of the cap would be consistent with the Schedule 13 approach for other growth-related infrastructure.

Public amenity partnerships

Development contributions may only be used to fund community infrastructure involving " … *land and development assets on land,* ***owned or controlled by the territorial authority*** …" (emphasis supplied).

While that is appropriate for most purposes the definition overlooks more modern partnership approaches to developing community infrastructure. For example, co-funding a new hall or indoor sports facility on Ministry of Education provided school land.

This is a cost-effective way of providing new community infrastructure that is very much in keeping with the principles of local government (especially around collaboration). These partnerships ought not be discouraged by limiting access to a legitimate funding source.

Crown liability

Section 8 of the Local Government Act establishes which obligations of that Act bind the Crown. The obligation to pay development contributions has been omitted from the list of binding obligations meaning that the Crown has given itself an exemption from any obligation to pay a development contribution.

Crown developments such as new schools, tertiary education, prisons, social housing developments and the like require council provided infrastructure to function. In some cases, this requires the provision of a peak capacity – for example school sewage disposal needs to be built for a thrice daily peak demand.

Some developments, such as tertiary establishments, high schools and some of the planned housing developments are/will be the size of small communities. Our comments on rates exemptions noted that an exemption of this nature sends extremely poor signals around the use of land.

Development contributions are a targeted charge for a service. The (specious) rationale that the Crown does not pay tax is not available in this case – making this one of the more blatant examples of expectation that the ratepayer subsidises the Crown. This should be removed forthwith.

Certificates of acceptance

A certificate of acceptance is a device for certifying that work undertaken without a building consent complies with the Building Code. For example, where work had to be done urgently or work was done by a previous owner without a consent. In these instances, issuing a certificate of acceptance replaces the issuing of a building consent as a trigger for a development contribution.

There is an issue of interpretation, in that the empowering provision does not state which policy should apply when a development contribution is levied when granting a certificate of acceptance, as provided for by S198 (4A) of the LGA i.e. either:

- the policy in force when the building consent should have been sought; or
- the policy in force at the time the certificate of acceptance is granted.

Clarification that either is the applicable policy would be a step forward over the current situation. Our view is that a clarification that it is the policy in force at the time the certificate is granted provides a stronger incentive to ensure people apply for building consents at the 'right time'. It also avoids having to make the subjective judgement that determining when the consent should have been applied for would involve.

Content of development contributions policies

There is a chain of logic in the policy requirements that sit behind the selection of funding sources. The first link in the chain is the revenue and financing policy (RFP) which requires local authorities to apply a set of economic and tax principles to the development of funding systems for each of their activities. That logic then flows into the setting of rates, fees and charges, development contributions etc.

But development contributions must also be set in accordance with a specific policy on development contributions. That includes a requirement to incorporate an assessment of development contributions against the RFP criteria in their development contributions policies. This unnecessary duplication makes the DC policies unnecessarily long and convoluted, especially since the assessment must be repeated for each activity. This does not add value to council or the public, but it does add cost.

Some information is still useful. Although all that is required is a summary of council's RFP, as it relates to funding growth related infrastructure, in development contributions policies.

Refunds on subdivision

Section 209 of the Local Government Act sets out what happens when a development does not proceed, and refunds are due. Refunds must be paid to the holder of the resource consent or building consent.

An issue can arise with subdivision. In these cases, it is possible that a developer may hold a subdivision consent for the development, but the owners of each title may

hold the consent for 'their' land (under section 134 of the Resource Management Act the consent attaches to the land). In these cases, there are two parties that could legitimately claim to be the consent holder and entitled to a refund. In our view the legislation should clarify that the consent goes to the current land-owner – this is most consistent with s134 of the Resource Management Act.

Administration of development contributions policies

Section 150 of the LGA provides a general provision enabling councils to charge for undertaking activities it is empowered to under any enactment – unless it is specifically prohibited from doing so.

At present, it is unclear whether assessing and issuing DC notices qualifies as *"a certificate, authority, approval, permit, consent, or inspection"* as specified in section 150.

Without unambiguous authority to do so, councils have been unwilling to set cost recovery charges. Assessing development contributions and issuing notices carries a staff cost in all cases and can be a considerable investment in time for large or complex developments. At present, this cost falls to ratepayers.

Development contributions provide a funding mechanism for capital works. They can only be used towards this purpose and cannot be used for covering administration costs.

This situation is at odds with most other aspects of council charging systems which usually reflects some aspect of exacerbator, or beneficiary pays (both principles that must be considered as part of developing a revenue and financing policy).

Section 150 should be amended to clarify that the cost of assessing and issuing DC notices can be recovered via fees and charges. Section 150 ensures this system cannot be abused. The fees prescribed must not provide for the local authority to recover more than the reasonable costs incurred by the local authority for the matter for which the fee is charged.

Recommendations 25 to 32: Development contributions

25. That regional councils be permitted access to development contributions where they can demonstrate a nexus between their services, capital expenditure and growth.

26. That the cap on reserve contributions be abolished.

27. That the law be amended to allow for recovery of development contributions on land that is not owned or controlled by the local authority.

28. That the Crown exemption from paying development contributions be removed.

29. That the legislation be clarified to provide that development contributions policy to use in assessing contributions on certificates of acceptance is the policy in force when certificates are issued.

30. That the requirements for development contributions policies be simplified by requiring local authorities to include a summary of the growth-related aspects of the revenue and financing policies as opposed to the full analysis.

31. That the Act be amended to clarify any refunds on subdivision consents should be made to the landowner.

32. That section 150 of the Local Government Act be amended to clarify that the cost of assessing and issuing DC notices can be recovered via fees and charges.

Bylaws

A bylaw is a law set by a local authority that has effect over a specified area within the local authority's jurisdiction. As a set these are one of the more confusingly and unclearly drafted parts of the Act and would merit a full review in and of themselves. We focus on three specific issues below.

Alcohol bylaws

Sections 147 to 147C of the Act provide local authorities with a specific power to make bylaws that regulate the possession and consumption of alcohol in public places, or when and how alcohol may be brought into public places.

Alcohol regulation is a matter of significant interest or concern to the public balancing alcohol-related harm and a personal freedom some feel particularly strongly about.

The Act imposes a particularly high evidentiary standard on local authorities wanting to make such a bylaw. In effect, a local authority has to demonstrate that there is a high level of crime or disorder in the area over which the bylaw would operate and that the crime or disorder "can be shown to have caused or been made worse by the consumption of alcohol". In the case of an existing bylaw under review the evidentiary requirement is to demonstrate that the crime or disorder would return.

There are several potential issues in generating or providing such evidence that leave these bylaws open to challenge. Statistical evidence may not be readily available, especially of instances of disorder. Ascribing causality can also be difficult to demonstrate, to say nothing of the standard for renewing a bylaw that falls not far short of requiring clairvoyance.

Alcohol fueled disorder is a matter of public concern. There are a number of these bylaws due for review by mid-2023.

Recommendation 33: Alcohol bylaws

That sections 147 -147C of the Local Government Act be reviewed for clarity and to ensure that the tests for justifying such a bylaw can realistically be met.

Expiration of bylaws

We turn to one of the least clearly drafted, and most frequently queried provisions in the Local Government Act as it currently stands. Local authorities are required to review bylaws made under the Local Government Act within five years of the bylaw being made, and at five yearly periods thereafter. Section 160A provides that a bylaw that has not been reviewed in this way is deemed to have been revoked two years after the date on which the review should have been undertaken.

Bylaws are intended to regulate activity – by prohibiting some activity, or requiring others be undertaken in a particular way and so on. Regular review of a bylaw ensures not only that it remains current, but that the limits on activity remain justified. Placing a deadline for the review is intended to ensure that this is done.

However, the provision does not clearly specify what Parliament intended happen at that point. Providing two years before the bylaw is automatically deemed revoked has created some confusion. As one regulatory team leader observes

"What exactly must happen within the two-year window? S158 references no later than 5 years after the bylaw was made (which is the date the council resolved to make the bylaw or the date the bylaw came into force) but s159 says no later than 10 years after it was last reviewed – is this the date of the agenda for the resolution that the council has completed the review and determined that a bylaw remains an appropriate way of addressing the perceived problem?

Is a bylaw that has not completed the process under S160(3) within 5 or 10 years of the date the bylaw was either made or the date of the most recent completed process under S160(3) – does this mean the bylaw is automatically revoked on the 2-year anniversary of that date and council must make a new bylaw to which the 5 year review period applies – or is it something else?"

Recommendation 34: Expired bylaws

That sections 160 and 160A of the Local Government Act be reviewed for clarity of intent.

Infringement offences regulations

The Local Government Act 2002 allows a Minister to make regulations that prescribe breaches of bylaws that are infringement offences, along with an infringement fee. Without these regulations a breach of a bylaw is not considered an offence, and no infringement fees are payable.

Breaches of bylaws under the Local Government Act must either be prosecuted through the courts or ignored altogether. The former is a time-consuming and costly enforcement tool, which makes prosecution inappropriate for all but the most significant of breaches. The latter sends the message that local regulation can be flouted with impunity.

Regulations prescribing infringement offences have not proceeded in part due to difficulty with the wording of section 259 of the Act which sets the scope of the regulation making power. As council bylaws differ to suit their local situation, the possible breaches of bylaws will differ from local authority to local authority. The practical solution is for the infringement regulations to be based on categories of offences, rather than specifying every offence in every council bylaw.

We support a category approach and understand that Crown Law has confirmed that a category approach can be taken under section 259 but that this is not supported

by other government advisers. Clarification in s259 would assist. An alternative would be to amend s259 to specify any bylaw breach as an infringement offence (this is the approach in the Dog Control Act 1996) or to amend s259 to enable local authorities to specify their own infringement offences (this is the approach in the Litter Act 1979).

Recommendation 35: Infringement offence regulations

That the Government make the regulations necessary to support the assessment of fees for infringement offences under the Local Government Act 2002. (This may require an amendment to section 259 of the Local Government Act 2002 to clarify that a category approach to infringement offences is within regulation making power.)

Part Two Amendments to the Local Electoral Act and related legislation and regulations

Franchise

District Health Board (DHB) elections

As we write this submission the Government is considering recommendations out of the health system review which would see the abolition of elected membership around DHBs (i.e. the Crown would appoint all DHB members).

There is a legitimate question as to the appropriateness of the current governance arrangements given central government is the sole owner of most DHB assets, supplies most of the funding and sets the standards. If that recommendation were accepted, it would remove the need to progress the recommendation below.

Local authority conduct of DHB elections is no more than an historical convenience. There is no overwhelming policy or practice reason for the arrangement – though it does help local authorities meet the fixed costs of local elections. The Electoral Commission conducts elections for two different types of member of parliament, under two different electoral systems, and this year with referenda on euthanasia and cannabis reform added. The conduct of around 20 DHB elections on a single system sounds relatively simple by comparison.

Voting in a local election can be complex – in some local authorities voters can be faced with six election issues not including local referenda or elections conducted in accordance with section 8, LEA (such as various community trusts).[15] In addition, in around 90 per cent of local authorities there is a multiplicity of voting systems to deal with, with the potential for voter confusion.

We submit that the movement of DHB elections away from the local electoral window would be one step towards reducing the complexity of local elections. Most DHBs are sizeable agencies, have a nominated person who is responsible for oversight of elections (though the Electoral Officers do the delivery) and should have the capacity to run an election. That local authorities run DHB elections is a matter of historical convention and administrative convenience rather than genuine necessity.

[15] Mayor, territorial councillor, regional councillor, community/local board member, DHB member, and licensing trust.

Recommendation 36: District Health Board elections

That the District Health Board elections be separated from the local election process.

Māori wards and constituencies

As a managerial organisation it is not our normal practice to comment on representation issues. However, this matter relates to the process through which the choice to have a separate Māori ward/constituency is made.

This is a matter for local choice based on an informed consideration of the needs and preferences of the community, especially iwi and hāpu. In some communities, particularly those where the relationships are strong, Māori may see no need for dedicated representation or even see such a move as a retrograde step. A separate ward or constituency is but one means for ensuring Māori perspectives are incorporated into the decision-making process.

As the legislation currently stands, a council decision to establish a Māori ward or constituency may be overturned by referendum. The statutory trigger for such a referendum is a poll of at least five per cent of electors on the electoral roll in the local authority.

There is no such trigger for polls about other decisions around wards and constituencies. The only other representation decision that may be overturned by poll is the decision on the voting system.

Of course, most representation review decisions may be appealed to the Local Government Commission. However, we are advised that is not the case with the decision to establish a separate Māori ward or constituency and currently no jurisdiction exists. The Commission or its successor needs to be provided with the authority to consider appeals and objections related to Māori wards/constituencies, whether the appeal concerns a proposal to establish such wards and constituencies or the lack of any such proposal.

The poll provision whether consciously or otherwise, impose a higher procedural standard on one representation arrangement than applies to others. There is no solid policy rationale for the difference in approach. We consider it potentially inconsistent with the Crown's obligations under the Treaty of Waitangi. The debate

at the local level becomes divisive and can subsume or distract attention from the other choices' communities need to make.

Recommendation 37: Māori wards and constituencies

That the legislation for the creation of Māori wards and constituencies in local elections be aligned with that which applies to the creation of other wards and constituencies. This includes the abolition of a poll and the extension of appellate rights.

Ratepayer franchise

The ratepayer electoral franchise is a feature unique to the LEA. Voters on the electoral roll vote in the local authority in which they reside, but in cases where they are a ratepayer in another local authority can also choose to vote in that local authority.[16] The textbook example would be an Aucklander with a holiday home in Waihi Beach, he or she is on the roll for Auckland Council, but may also enrol to vote in elections for the Western Bay of Plenty District Council. The ratepayer franchise flows from the principle of 'no taxation without representation' and should be retained.

Eligible electors who wish to exercise the ratepayer franchise need to enrol separately as a ratepayer elector. But, unlike the process for enrolling as a Parliamentary elector, the ratepayer elector must re-enrol each triennium.

The nature of the enrolment process is such that only the truly committed take up ratepayer enrolment. Turnout on this franchise is generally a great deal higher than for other voters - in past elections turnout of ratepayer electors has generally been 75 – 80 per cent. However, the number of ratepayer electors has declined markedly.

Local authorities must provide public notice of the qualifications and process for enrolment as a ratepayer elector, in the May proceeding local elections, and provide a further notice with rates assessments or rates invoices delivered before the end of September preceding local elections. Taituarā undertakes a promotional campaign

[16] To qualify as a ratepayer elector, the potential voter must be identified in the appropriate valuation roll as the sole ratepayer in respect of a rating unit within the region, district, local board area, or community. If A Smith and B Smith, Aucklanders, jointly own a rating unit in Kaipara only one of them can exercise rights to enrol as a ratepayer elector in Kaipara. An elector who owns property in different community or local boards within the same local authority can also register as a ratepayer elector in respect of the community/local board election only.

on behalf of the sector to ensure messages are clear and consistent across the country, and acts as an agent in the joint procurement of media space.

We consider that enrolment as a ratepayer remain continuous up to the point where the elector chose not to remain on the roll or is no longer eligible. Electoral officers have reported that some on the ratepayer roll do not always realise that they need to reapply, and consequently there is attrition on the roll, or the ratepayer needs to cast a special vote.

Recommendation 38: Ratepayer franchise

That the Local Electoral Act 2001 and Local Electoral Regulations 2001 be amended to allow for continuous enrolment on the ratepayer electoral franchise.

Candidates and Candidacy

Election period

One of the most fundamental concepts in an electoral system is that of the period over which the election is conducted. Depending on the jurisdiction, this concept is used to regulate matters such as expenditure rules, advertising, whether and when candidate polling occurs and the like.

Section 104 of the Local Electoral Act refers to an "applicable period before the close of polling day" as starting 90 days before polling day. However, this is set out in an interpretation section located in one subpart of the Act (subpart two of part five). It is therefore far from clear whether Parliament intended this apply elsewhere in the Act – for example elsewhere in Part Five (covering donations) or part 5A (covering advertising).

This is a longstanding bone of contention between candidates and electoral officials. A concept such as this should be clearly specified and applicable across the entirety of the Act – unless there is a sound policy rationale not to. This would be placed in the present section 5 (which defines the core concepts used across the Act) and require standardisation of terms in the provisions governing donations, expenses, and advertising.

Recommendation 39: Election period

That a definition of election period be added to section 5 of the Local Electoral Act and used across the provisions that govern donations, expenses, and advertising.

Proof of eligibility

Candidates for local office must be New Zealand citizens, and attest to this on the nomination form. Section 21 of the Local Electoral Act makes it an offence to nominate a candidate knowing that person is ineligible to hold office or for a candidate to accept a nomination knowing that they are ineligible to hold office.

Figures from the 2018 Census show that 27 per cent of people who are resident in New Zealand were not born here. As we are a nation with a growing migrant population, we can expect that this issue will not go away.

The nomination form in use in most local authorities makes the candidate aware that they may be asked to furnish proof that they are a New Zealand citizen. The form also makes it clear that acceptable proof includes a New Zealand Passport, New Zealand Birth Certificate, or other New Zealand Citizenship documents, such as a Certificate of Citizenship or Determination of Citizenship.

Electoral officers rely on the candidate certifying their eligibility in two places and signing the form, on the legal sanction and on loss of office as the control.

The nomination form for the recent general election appears to require a similar certification. It also requires candidates born outside New Zealand to furnish proof of citizenship and helpfully directs candidates who are unsure about their status to the Department of Internal Affairs.

However, the legislative authority for this could be made a lot more certain especially in circumstances where a candidate refuses to produce proof. We recommend an amendment to section 55 to require candidates to furnish proof that they are a New Zealand citizen.

Recommendation 40: Proof of eligibility

That section 55 of the Local Electoral Act be amended to require candidates to furnish proof of New Zealand citizenship.

Campaign expenditure limits

The Local Electoral Act prescribes limits on candidate expenditure. We support the annual indexing of these limits. Even in a low inflation environment inflation still moves at 4-5 per cent over the course of a triennium. We submit that the Act should be amended to allow for the setting of expenditure limits through regulation than by statute. Parliament's time ought not be diverted for mechanical amendments.

Recommendation 41: Campaign expenditure limits

That the Local Electoral Act be amended to allow setting of campaign expenditure limits by regulation.

Electoral signage

The election period, electoral advertising and electoral signage are three issues that tend to go hand in hand. There is no limit or regulation on signage of any kind in the Local Electoral Act. We can find references in the candidate handbook for the 2020 general election to a maximum of three-square metres in size and anything beyond that requires local authority permission.

It is left to local authorities to regulate if they want to allow signs of greater size. They do so by using either the district plan provisions or bylaws. The lack of a direct authority back to the Act means that this in practice is one of the more frequently complained about aspect of elections. Something clearer and more certain would remove one aspect that 'bush lawyers' tend to challenge.

Recommendation 42: Electoral signage

That the Local Electoral Act be amended to allow setting of regulations governing electoral signage, and that such regulations be advanced in advance of the 2022 elections.

Social media and elections

When the LEA was enacted social media sites such as Facebook and Twitter did not exist or were very much in their infancy.

Social media is now a core element of election communications and campaigning strategies and techniques of candidates. With it has also come the use of social media by electors with views on issues or candidates. With it, predictably, has come a raft of issues around the applicability of the regulatory settings to social media. This is particularly true of the provisions around election advertising.

We have previously advised councils that a communication that appears on the internet probably falls outside the scope of section 113 but that the legislative provisions could be a great deal clearer. This conclusion is based on the fact that section 113(1) provides a list of places where advertisements cannot be published without authorisation including:

"*… any newspaper, periodical, notice, poster, pamphlet, handbill, billboard, or card, or broadcast or permit to be broadcast over any radio or television station, any advertisement…*"

Campaigning online is something that will only increase, both in terms of its quantity and its sophistication. It is an offence for candidates (or persons acting on behalf of a candidate) to publish an advertisement without the proper authorisation. That being the case there should be far greater certainty in the treatment of internet-based communications.

Parliament has expressly included internet-based advertisements that apply to Parliamentary elections. Section 3A of the Electoral Act states that an electoral advertisement is an 'advertisement ***in any medium***…", which would extend to the internet or online media.

However, this is also safeguarded with a series of exemptions. These should be reviewed and where consistent with the intent of the LEA, these exemptions should be incorporated into the LEA. In particular, section 3A(2)(e) expressly excludes *"any*

publication on the Internet, or other electronic medium, of personal political views by an individual who does not make or receive a payment in respect of the publication of those views" from being regarded as an advertisement. This would avoid doubt as to whether activity as trivial as a member 'liking' a candidate's Facebook post requires a promoter statement.

Recommendation 43: Social media

That, in accordance with practice in Parliamentary elections:
the definition of advertisement in the Local Electoral Act be amended to include advertisements in any medium
the expression of personal political views on the internet be expressly excluded from the definition of electoral advertisement.

Local Electoral Processes

Electronic transmission of nominating documents

One of the ways that the declining postal services manifests itself was in the delivery of nomination forms from potential candidates. In some parts of many regional councils, and some of the larger rural councils, it is not uncommon for post to take a week to get from an isolated community to the receiving council offices.

We have been made aware that local authorities had received conflicting legal advice as to whether nominations that were scanned and emailed were 'in writing' for the purposes of the LEA. Our own advice is that the answer to this question is far from clear, and the least risk course of action is for candidates to 'post early'. Clearly something as fundamental as what 'nomination in writing' means should be clear and certain.

We submit that a nomination received electronically should be valid provided that the particulars are all clearly legible (including the signatures and addresses of the nominee, nominator, and seconder).

Recommendation 44: Transmission of Nominating Documents

That the Local Electoral Act 2001 be amended to allow for electronic transmission of nomination forms.

Order of candidate names

There is evidence from overseas that the order in which candidates appear on a ballot paper can influence the result – admittedly little of this is from local elections. The legislation allows local authorities the option of resolving whether candidate names be in alphabetical order, quasi-random order, or fully random order.

Under current legislation the decision on candidate order sits with elected members. We question the appropriateness of those who stand to benefit from a decision being permitted to make it. With modern printing methods there is very little additional cost in arranging to randomise the list of candidate names on the ballot. We do not propose to extend this to the candidate profile booklets – the voter is less likely to pick through a randomised set of 150-word statements.

Recommendation 45: Order of candidate names

That the Local Electoral Act be amended to require local authorities to print the ballot paper using random ordering of candidate names.

Access to the supplementary roll

The Electoral Commission maintains what are known as supplementary rolls. These are electors who have enrolled after the close of the roll. This data is not currently available to local authorities. Requests for this data have been rejected due to an apparent lack of specific authority for the Commission to supply information.

In the absence of this information the electoral officer must send details of the requests to the Electoral Commission and wait for confirmation. We have received advice that this process has delayed the declaration of results by as much as three days in some local elections.

Recommendations 46 and 47: Access to the supplementary roll

That:

46. the Electoral Act 1993 be amended to require supply of a supplementary roll before polling day and
47. local authorities should be provided with access to the deletions file.

Hours of voting

We raise two issues around hours of voting.

Firstly, advance booth voting has long been empowered by the Act and regulations (it referred to as 'voting over consecutive days'). The voting ends at 7pm on polling day, but in the period leading up to election day the requirement is that booths are open 'during ordinary office hours. These days there is not necessarily a standard definition of these hours. To the extent that there is a common practice (say 9-5) that may prevent some workers from being able to cast a vote (and noting that there is no equivalent of the requirement to allow time off to vote as there is in the Electoral Act).

The Local Electoral Act has provided for local authorities to use combinations of booth and postal voting since enactment.[17] The provisions around close of voting create potential confusion. Section 5 of the Local Electoral Act sets the close of polling at 12 noon for a postal election and 7pm for a booth election. There is currently no specific provision governing the combined, and no local authority that has operated a combined system to provide a precedent. A local authority that, for example, chose to close at 7pm (being the later time) might find its interpretation challenged.

Recommendations 48 and 49: Hours of voting

That:

48. the Local Electoral Regulations clarify the hours that booths may be open on days before election day (and that at least one of these allow for close of voting for the day after 5pm) and

[17] Section 5, Local Electoral Act and Regulation 9, Local Electoral Regulation.

49. the Local Electoral Act and Regulations be amended to allow for an explicit time at which polling closes in elections run using a combination of postal and booth voting.

Special voting

Electors can cast a special vote in the following circumstances:

(a) the elector's name does not appear on the roll or has been wrongly deleted
(b) the elector's name is not entered on the roll in respect of a particular ward, local board area, community, or constituency
(c) the elector spoils, loses or does not receive their voting documents or
(d) the elector satisfies the electoral officer that it will not be possible or practicable for the elector to cast an ordinary vote without incurring hardship or undue inconvenience.

We are advised that up to a quarter of special vote applications are declined because the elector waits to the last minute to make a request for a special vote and then returns a form that misses statutory requirements. One of the more common reasons for declining is that the application is not witnessed at all, or not completed properly (for example the witness' address is missing).

Most local authorities use a template form from Taituarā's Code of Electoral Practice to collect the information that is necessary to approve an application for a special vote. But this form is designed around the existing requirements of regulations 35-45 of the Local Electoral Regulations. The requirements should be reviewed to ensure there are no unnecessary procedural blockages.

Recommendation 50: Special voting

That the content of the special voting regulations be reviewed to ensure they operate as simply as is consistent with the principles of the Local Electoral Act.

Replacement ordinary votes

Steps can be taken to make the act of voting more convenient for electors without endangering the integrity of the poll. One of the most frequent elector frustrations is that they cannot make an ordinary vote if, for example, they saw a booth open for

advance voting or another official place. In those circumstances the elector must be issued a special vote – which is a time-consuming process.

Better empowering advance booth voting would be most effective if councils were able to issue a replacement ordinary vote. In effect this would mean that if an elector presents themselves at an advance polling place, the staff would be able to print off their paper (including the bar code and other features designed to support end to end assurance). The alternative at present is that the elector would either claim they lost or spoiled their paper (and be issued a special vote) or they would be turned away.

We do not intend that this be a device for allowing people to change their vote if they have "buyer's remorse". A person who attempts to vote more than once would still be subject to the provisions of the LEA, including potential prosecution.

Recommendation 51: Replacement ordinary votes

That the Local Electoral Regulations be amended to explicitly allow Electoral Officers to issue a replacement ordinary vote on request by those who have not already voted.

Electronic transmission of votes from overseas

The LEA and Regulations currently only allow voters wanting to cast a special vote to receive or deliver the documents by post or in person. This makes casting a special vote problematic at best for those voters who are overseas. In essence the voter has to know that they will be at a particular postal address during a particular window of time (in some parts of the world that window may be as narrow as 2-3 days even if the international postal system works to the optimum).

The Electoral Regulations 1996 now permit the electronic transmission of special voting documents from electors who are overseas, provided that a secure means of transmission is available.[18] We can see no reason why a similar provision could not be incorporated into the Local Electoral framework.

Of course, this is very much an interim, second-best solution while central and local government works on the policy, security and technical issues associated with online voting.

[18] Regulation 47B, Electoral Regulations 1996.

Recommendation 52: Electronic transmission of votes from overseas

That the Local Electoral Act 2001 be amended to allow electronic transmission of special votes to and from voters who will be overseas during the election period.

Access to the unpublished roll

The Electoral Act 1993 creates what is known as the unpublished roll. This is a device for protecting those electors whose personal circumstances are such that publication on the electoral roll may compromise their personal safety (for example, police officers and those who are protected by a domestic violence protection order). By law, details of those on this roll cannot be provided to anyone outside the Electoral Commission. This includes local authority electoral officers and their staff.

Those on the unpublished roll are eligible to vote in local elections. In these cases, the Electoral Commission notifies the elector that they are eligible to vote as a residential elector. The voter then contacts the electoral officer to exercise a special vote and fills in a special voting declaration.

As it stands the process is reliant on the elector making an approach to the electoral officer. The number of special votes issued is generally a great deal lower than the number on the unpublished roll (and remember that this is just one of the grounds that an elector may have for requesting a special vote).

Taituarā accepts that personal safety is a valid concern and that there should be protections for voters with a genuine and demonstrable concern for their personal safety. Electoral officers and staff make a declaration, which includes an undertaking not to disclose information received in this role unless authorised by the LEA. An intentional or reckless breach of this Act is an offence punishable by a fine of up to $2000. It seems highly probable that an electoral officer guilty of any breach, whether intentional or not, would also face disciplinary action and (potentially) employment consequences

We do not see these concerns as insurmountable in that electoral officers and staff are subject to the same restrictions as Electoral Commission staff and the returning officers. These protections could be extended to others exercising functions in support of local elections, such as mail house staff.

Recommendation 53: Access to the unpublished roll

That the Electoral Act 1993 be amended to provide electoral officers with access to the unpublished roll.

Tied elections

There were several extremely close elections in 2019. There was some public concern at the resolution of the tied election in Whakatane District Council where the candidate declared elected after the decision by lot was unseated after a judicial recount. The fact is any result can be overturned up until the last opportunity for review has passed. The same principle applies in Parliamentary elections where candidates can (and have) been declared unseated after an electoral petition (in one case 364 days after the election).

Information for candidates around post-election processes could be enhanced to clarify both what steps are available and how close results are managed. We will address this in the next review of the Taituarā Code of Good Practice.

There is merit in investigating whether a mandatory judicial recount should be undertaken prior to any decision by lot in a tied election. A judicial recount would provide an independent result with authority from the court and any further appeal to the results would be precluded.

Recommendation 54: Tied elections

That further consideration be given to an amendment to the Local Electoral Act that provides for a mandatory judicial recount before any tied result proceeds to decision by lot.

Part Three Amendments to the other legislation within the Local Government Portfolio

Local Authority Members' Interests Act 1968

Some readers may be tempted to regard the Local Authority Members' Interests Act 1968 (LAMIA) as primarily a governance matter, and not something a managerial member organisation such as Taituarā should have a view on.

Our members have a critical role in helping elected members understand their obligations. LAMIA is a mandatory inclusion in the first briefing Chief Executives must arrange for an incoming council. Our members and other staff in local authorities are frequently called on as 'first responders' when elected members are unsure whether they have an interest.

We support the policy rationale for LAMIA, namely that those in elected office make decisions in the public interest and without the intrusion of personal interest.

But LAMIA in its current form is complex, outdated, and difficult to interpret and apply. It predates accrual accounting, the modern financial management provisions, and the introduction of mandatory competitive tendering for NZTA roadwork and its acceptance elsewhere. It also predates the common practice that elected members declare their interests. Some core concepts, such as pecuniary interest are not defined.

The Act establishes two key rules that govern the management of elected members pecuniary interests (non-pecuniary interests are not included). These are the:

- discussing and voting rule and
- contracting rule.

The *discussing and voting* rule holds that elected members' must not vote or take part in discussion of any matter where they have a pecuniary interest (other than one in common with the public) that is before a local authority. Breaching this requirement is a criminal offence, and on conviction, a member is ousted (that is the office is deemed to be vacant). Although it is not always easy for elected members to determine whether their interests are pecuniary or whether they are in common with the public.[19]

[19] To give an example, an elected member discussing and voting on the general rate has an interest in common with all other owners of rateable property and (sensibly) then would not experience

The second of the key rules is the so-called contracting rule. This provides that any elected member who is concerned or interested in contracts with the local authority of more than $25,000 in any year is disqualified from office (unless they receive approval) from the Auditor-General. There are several concerns with this provision.

For example:

- disqualification is automatic, there is no prosecution or formal declaration of the fact (unless the elected member acts while disqualified)
- it is not clear how long disqualification lasts
- it is unclear whether the Act applies to, or should apply to CCOs
- the $25,000 limit has not been amended since 1982, adjusting for inflation since then means this limit now has little more than a third of the 'value' it did then.

We doubt whether the contracting rule is needed at all. Having an interest in contracts with a local authority would create a conflict of interest for an elected member that might apply to a certain area or areas of the local authority's operations. But should the fact that a councillor who owns a road contracting business that contracts with the local authority automatically rule them out from involvement in decisions around parks or libraries or water supply? It is also hard to see how an interest of this nature would not also be pecuniary and remove that councillor from discussion and voting on some roading matters.

We submit that this is a piece of legislation that needs to be reviewed from first principles.

Recommendation 55: Local Authority Members' Interests Act

That the Local Authority Members' Interests Act 1968 receive a first principles review.

Local Government Rating Act 2002

The Local Government (Rating) Act 2002 (the Rating Act) is a largely well-designed piece of legislation – within the limitations that a system based on property taxation has. We would however like to raise five issues with you:

any issues under this legislation. However, where a targeted rate was over a particularly small group of ratepayers an elected member may find themselves with a pecuniary interest. These issues are not black and white – there are many variations of grey.

- rating exemptions
- mandatory 50 per cent remissions
- value capture
- volumetric charging for wastewater disposal
- collection of rating information and
- delegation of the collection of rates assessment, collection, and enforcement.

Rating exemptions

Schedule One of the Local Government (Rating) Act 2002 contains an exemption from rates for 22 different categories of land. Some of the categories are quite small but others are quite significant in their scope (for example National Parks, the education sector, and the road network). The only rates these properties pay are targeted rates for water supply, sewage disposal and refuse collection.

In *Auckland City Council* vs *Royal New Zealand Foundation for the Blind (2006)*) Justice William Young had this to say about rating exemptions
"Over the 130 years which have elapsed since a national system of rating was introduced, there have always been some statutory exemptions from rating. These exemptions have always been disparate in nature, and some of those which remain in the current Act seem distinctly odd."

This is a good summary of the current set of exemptions – the policy rationale for many of the exemptions is non-existent or highly suspect. Many seem to be the result of historical accident rather than any genuine policy rationale. The drafting of many is open to interpretation and debate. For example, the above case relates to whether land owned by a charity but rented to a third party to generate revenue for the charity meets the requirements of clause 21 of the Act. Another holds that property owned by a school board and let to a teacher is non-rateable while the same property let to any other person would be fully rateable.

In the most recent review of rating legislation (2001) the then Government's policy decision was to roll over the existing set of exemptions while modernising the language and recasting the exemptions so they would be based on land use not ownership (although in practice many still have some reliance on ownership – especially where Crown agencies are the landowner).

It appears the policy rationale for rates exemptions fall into one of five categories:
- properties are held for public good purposes (i.e. are meeting some purpose that is deemed to be a "national good")

- properties have little or no real economic use and thus may not be able to meet the cost of paying rates
- properties do not consume services provided by local authorities or consume only limited amounts
- some non-rateable properties provide benefits to the local authority that may not otherwise have been generated. For example, it is claimed some national parks generate tourist visits which in turn provide centres like Ohakune with economic benefits they might not have captured otherwise
- exempting properties avoids distortions in the market – this one is most commonly used to justify exemptions for ports, airports and the rail network (if roads are non-rateable then not exempting these properties provides road transport with a cost advantage).

Each of these arguments is superficially attractive but falls on closer analysis. The national good argument is an argument for national funding of the rates on these properties – to do otherwise effectively expects the local ratepayers in Westland or Dunedin to subsidise the benefits of others. Other properties provide benefits to local communities (for example in some towns the pulp and paper mill, or the freezing works are virtually the sole employer) yet these properties are fully rateable. The "level playing field" argument is possibly the strongest argument of the above – although it should be noted that (with the exception of suburban rail in Auckland and Wellington) ports, airports and rail compete with the state highway network rather than local roads.

In our view few of the current exemptions would survive a first principles review. In cases where a genuine rationale exists, then the exemption needs to be drafted in as clear a manner as possible to avoid providing loopholes and unintended consequences.

The sector would be willing to discuss arrangements for transition towards the removal of exemptions, and would be willing to help contribute to resolving some of the issues this might raise (such as valuation methods for land where there is no active market).

Recommendation 56: Rates exemptions

That the present set of rating exemptions in the Local Government (Rating) Act 2002 be removed *in toto*.

Mandatory 50 per cent remissions

In addition to the rates exemptions, the Rating Act also provides for a mandatory remission (50 per cent reduction) of rates on three categories of property that are primarily used for different types of recreation. Some of these are very broadly drawn such as 'games or sports' or 'any branch of the arts.

As with the case with rating exemptions, we see no solid rationale for requiring a mandatory remission. It is de facto a partial remission.

Recommendation 57: Mandatory 50 per cent rates remissions

That the present set of mandatory 50 per cent rates remissions in the Local Government (Rating) Act 2002 be removed *in toto*.

Value capture

Value capture is a type of public financing that recovers some or all the value that public infrastructure generates for private landowners. These are often based on a normative judgement that the increases in value are the unearned result of public investments to which the landowner has made only a marginal contribution.

Commentators such as the Productivity Commission, various development and commercial groups and the occasional local authority seek the introduction of value capture mechanisms. The most common form of this is tax increment financing (TIF) as an additional tool. While TIF schemes take a variety of forms, most are variants on the following basic structure:

1. a proposed project or piece of expenditure is identified. This might be a piece of infrastructure or a development programme
2. the local authority then defines an area of benefit for the project (known as the TIF district), and sets out the proposal including the rates of tax etc. In some jurisdictions where TIF are used primarily as a regeneration tool, there has to be a finding of 'blight' or 'decline'. Significantly the TIF district is generally a legal entity in its own right whether 'ringfenced' within the local authority or a standalone entity
3. the local authority determines the base value for the TIF district. Values are frozen at that point for TIF purposes – the TIF is collected only from the new value in the TIF district

4. the local authority borrows the funds necessary to undertake the development project – often this is done through the issue of 'TIF bonds' debt securities that entitle the bondholder to a 'share' of TIF revenues
5. each year the revenue collected via the TIF scheme is used to repay the loan. All revenue off 'new value' goes to the TIF district and not to the local authority.

TIFS have similar objectives to a targeted rate in that those that are deemed to benefit from a particular expenditure pay for that expenditure. The difference is that a targeted rate is allocated across all value in benefit, a TIF only over new value.

In its report *Using Land for Housing* the Productivity Commission noted that TIF would require legislative change to work effectively. As the Commission notes: *"Rates are calculated in a top-down method; with a council first agreeing a LTP and a financial impact statement, then allocating the financial burden between ratepayers (as noted in s 23 of the Local Government (Rating) Act 2002). Where an infrastructure investment increases the rateable value of newly serviced land, this only causes the total rating burden to be reallocated among ratepayers. No new revenue is generated unless a council also increases its forecast expenditure. Nor is it possible to forecast what the rate take from a new development will be in the future, because it depends entirely on the council's expenditure plan (which is subject to change)."*[20]

This will require more detailed policy work – probably on the level that introducing development contributions took.

Recommendation 58: Value capture

That the Department, Taituarā and Local Government New Zealand develop a proposal for adding a value capture tool to the Rating Act.

Volumetric charging for wastewater

Section 19 of the Local Government (Rating) Act ('the Rating Act') allows local authorities to set a rate for water supply that is based on a measurement of water used by or supplied to each rateable property. This is known as volumetric charging, or 'metering' by the public. Around 30 local authorities make use of this power, in some individual cases up to 20 per cent of the rate take comes from this tool.

[20] Productivity Commission (2015), *Using Land for Housing* – draft report, page 190.

However, the Rating Act does not contain a similar provision allowing local authorities to assess rates for wastewater disposal on the same basis. A volumetric charge may be a more equitable mechanism than other alternatives such as a pan charge or a value-based rate in that it is tailored to actual use. Volumetric charging for both water and wastewater can also provide local authorities with incentives to manage the entire water cycle in an integrated fashion.

It is common in overseas jurisdictions for wastewater disposal to be charged on the basis of water consumption (a usual proxy is that wastewater costs are recovered on the assumption that a volume of 80 per cent of water consumed on the property eventually leaves the property via the sewage systems). However, technology is becoming available to meter wastewater disposal directly – thus the legislation should be future-proofed to allow for recovery on either basis.

Recommendation 59: Volumetric charging for wastewater disposal

That section 19 of the Local Government (Rating) Act 2002 be amended to allow wastewater disposal to be rated for based on either the volume of water consumed or the volume of wastewater leaving a property.

Supply of rating information

Local authorities have access to a very powerful tool in the targeted rating powers allowed under Schedules Two and Three. But this flexibility must be traded off against compliance costs. One of the major aspects of compliance cost is the generation and maintenance of information necessary to set and assess the rate.

Not all the factors in Schedule Three are collected by the valuers as part of the revaluation process. In particular, the valuers take little role in determining the number of separately used or inhabited portions of a property (or SUIPs). While this is appropriate as different local authorities, quite legitimately, have different definitions of SUIP and some can turn on narrow distinctions of fact, this is one of the most common bases for setting targeted rates.

Establishing what is and is not a SUIP is reliant on having reliable, up to date information. Parts of a property move into and out of SUIP status all the time. In a similar vein properties or parts of properties change use for differential purposes all the time.

Yet all this information is reliant on the ratepayer to disclose the information that is relevant for the calculation of their rating liability. At the present time the ratepayer is required to disclose only when properties are sold or some other circumstance that is relevant to determining who the ratepayer is. Other circumstances relevant to the calculation of rates (such as a change of use) are not well captured under these provisions.

We submit that the Act should incentivise people to take timely action to notify the local authority of sale, lease, change in use and the like. In addition to a specific requirement, the incentive of not being able to claim refunds where the ratepayer has failed to notify relevant changes.

Recommendation 60: Supply of rating information

That the Local Government Rating Act be amended by requiring ratepayer disclosure of all information relevant to the setting of rates and amending requirements to refund overpaid rates where the ratepayer has failed to notify a local authority of a change in a reasonable period of time.

Rates Rebates Act 1973

The Rates Rebate Act 1973 established the Rates Rebate Scheme, a scheme that was intended to help low-income ratepayers pay their rates. The bulk of the administration is undertaken by local authorities, the applicant submits their paperwork to the local authority which processes it and then sends to the Department of Internal Affairs for final approval.

We are advised that in the year to 30 June 2018 (the latest available) some 97,500 ratepayers received rebates totalling approximately $55.4 million.[21] Many, but not all, applicants are superannuitants. Before embarking on a further discussion of the scheme and the issues with the scheme we would like to make it clear that the assistance that the scheme provides makes a real difference for nearly 100,000 ratepayers.

The Act is now quite dated. As a statute it is starting to take on something of a patched look that will make it increasingly difficult to interpret and apply. Some of the provisions appear outdated. For example, section 5(2) of the Act prohibits

[21] Source: Department of Internal Affairs

regional councils from processing applications for the scheme. The five regional councils that collect their own rates, must have any applications processed by their constituent territorials.

In the last year Parliament has enacted the Urban Development Act and the Infrastructure Funding and Financing Act. Each of these provides third parties (Kainga Ora in the former case, and a so-called special purpose vehicle in the latter) with the ability to borrow to finance the construction of infrastructure in a defined project area and then require local authorities to collect a levy through the rating system to repay the loan (and special purpose vehicles will also collect a commercial return).

It is not clear whether these charges are rates for the purposes of the scheme. Given the one special purpose vehicle created as of the time of writing charges residents in the project $1000 per annum (house) or $600 (flat), the exclusion of these charges may defeat the purpose of the scheme.

As we write this paper, the Government is considering proposals to change the way that the so-called three waters infrastructure is delivered. Some of the possible models include the removal of these services from local government and their placement at 'arm's length' from political control. These too, need to be treated as rates for the purposes of the scheme.

Recommendation 61: Rates Rebates Act

That the coverage of the Rates Rebate Act 1973 be extended to

a. water and wastewater charges levied by CCO and any charges set by any new three waters entities
b. charges set by Kāinga Ora using the authority of the Urban Development Act and
c. charges set by any special purpose vehicles created under the authority of the Infrastructure Funding and Financing Act

Taumata Arowai – the Water Services Regulator Act 2020

"In terms of the qualifications of board members, I consider it beneficial that they have an understanding of the regulator's work - both in relation to water regulation, and in

governing a regulatory body more generally. It is also important that the board, and the organisation more broadly, includes people who understand Te Ao Māori."[22]

We consider the above paragraph is a succinct statement of the overall skill sets that the governing body should have. Cabinet must have thought so too. The minute of the decision on this proposal notes that Cabinet agreed
"that members of the governance board would collectively have knowledge and experience that includes: the work of the regulator, including public health knowledge, and the broader environment in which the regulator operates"[23] (emphasis supplied).

That, very wise, decision has not been carried through in the legislation. Nowhere is the Board required to have any knowledge or understanding of the operation of a drinking water supply or wastewater operation. Taumata Arowai needs an understanding at governance level of the impacts of the regulations it is proposing – practicability, capability, and cost implications not least.

A Board missing these skill sets will struggle for credibility. Bringing on the skill sets as a matter of course could be done by either requiring expertise in the provision and management of drinking water services, or by requiring appointment of at least one representative from the regulated community.

The Water Services Bill currently before Parliament provides an opportunity to amend the primary legislation to make knowledge or understanding of three waters services a mandatory skill set for the board. If not, then we would strongly recommend that the appointment of one or more candidates with this knowledge is a 'must' when board appointments are made.

Recommendation 62: Taumata Arowai – the Water Services Regulator Act

That section 12 of Taumata Arowai – the Water Services Regulator Act be amended to add knowledge of the operation of water services as one of the skills sets for the Board of Taumata Arowai.

[22] Minister of Local Government (2019), *Three Waters Reform: Institutional Arrangements for a Drinking Water Regulator*, page 10 (at para 55).
[23] Minister of Local Government (2019), page 3 (at para 11,1).

Dog Control Act 1996

Finally, in this submission, an opportunity to enhance the way one of the services most associated with local government is experienced by the end users.

The Digital Local Government Partnership Group convened by the Department of Internal Affairs and Taituarā invited the Association of Local Government Managers (ALGIM) to develop a streamlined dog registration process. The intent was that this process would also interface with National Dog Database (NDD) requirements.

ALGIM led a group of territorial authorities to develop an online centralised dog registration system that incorporated the NDD requirements and the legislative changes required to support such a process. This would enhance the overall convenience of the systems for dog owners, and by doing so enhance the level of compliance with the legislation. Centralising the registration process also promotes consistency across the country.

The Dog Registration Pilot Group and ALGIM identified the following legislation changes required:

- registering the dog at annual anniversary of the dog's first registration date, rather than 1 July each year. Those owners with more than one dog would be able to spread registration fees throughout the year. Local authorities would avoid having to 'resource up' around an annual peak of activity
- replace plastic discs/tags with microchip as the unique identifier – over time this would minimise the environmental impacts of relying on plastic dog tags (which can be easily damaged or lost) while enhancing the integrity of the registration system. This would require additional work around the transition for those dogs already registered
- microchip at three months, rather than five months – in effect aligning the microchipping with the three-month vaccinations and reducing interactions between the dog owner and local authorities
- register all dogs through one Central National Dog Database. Local Authorities could still act as agent. (There is a central agent administering, processing, and reporting status of dog registrations for NZ.)

Recommendation 63: Dog Control Act

That the provisions of the Dog Control Act 1996 be reviewed to enable a new registration process for dogs utilising the National Dog Database as the authoritative source of information.

Taituarā

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