

Local Government Act 2002 Amendment Bill

Government Bill

As reported from the Local Government and
Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Local Government Act 2002 Amendment Bill and recommends that the amendments set out below be passed.

The committee was unable to agree that the bill be passed. The recommendations we endorse are those on which all members of the committee agree. Where we have been evenly divided in our opinion no amendments are proposed, but we discuss our consideration of the major issues (such as the purpose of local government and polls on reorganisation proposals), and a number of other matters, in the course of our commentary.

Introduction

This bill seeks to amend the Local Government Act 2002, to improve the operation of local government by focusing councils on operating more efficiently. The bill provides for the establishment of financial prudence requirements and performance benchmarks. It would allow

councils to determine policies on remuneration and staff numbers, and seeks to extend some aspects of the Auckland mayoral model to cover all mayors.

The bill also seeks to establish a more flexible range of mechanisms for Crown assistance and intervention in the affairs of individual councils, with the aim of providing assistance to councils before situations become critical.

The bill is intended to streamline local authority reorganisation procedures, give the Local Government Commission more flexibility to develop reorganisation proposals put forward by individuals, organisations, or communities, and make it easier and faster for proposals to proceed.

The purpose of local government

Section 3(d) of the Act provides for local authorities to play a broad role in “promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach”. Clause 4 of the bill seeks to replace this with “meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions”.

There is concern that the proposal to replace the “four well-beings” (social, economic, environmental, and cultural) would remove key responsibilities from local government and threaten the maintenance of local government activities that foster community cohesion and welfare. There is also concern that the proposed changes could increase the potential for judicial review of local government decisions.

Section 11A of the Act lists core services which local authorities “must have particular regard to” including public transport services, libraries, museums, recreational facilities, and the avoidance or mitigation of natural hazards. Because the bill does not seek to amend section 11A, there is a view that amending section 3(d) would not constrain local authorities from continuing their current activities.

We have considered the arguments for and against amending section 3(d) of the Act and are evenly divided in our opinion.

Transitional arrangements for reorganisation proposals

Clause 11 seeks to allow certain statutory requirements, including scheduled elections, to be extended or postponed after public notice of a final reorganisation is given, but before the fate of the proposal is known.

There is concern about the democratic implications of delaying elections, as well as more technical questions such as whether a postponed election should be re-synchronised with other local authority elections.

We considered a number of proposed amendments regarding transitional arrangements with a view to strengthening these provisions, but were ultimately unable to reach agreement.

The power of the Minister to act

Clause 21 seeks to replace Part 10 of the current Act. New Part 10 would establish a more flexible range of mechanisms for Crown assistance and intervention. Currently the relevant Minister can intervene only by replacing a local authority with commissioners or calling an election. Such an extreme action should not be undertaken lightly, which is why providing lesser levels of assistance early is favoured.

There is concern, however, that the particular approach taken in this bill would undermine the autonomy of local authorities by placing more power with the Minister, as he or she would have more opportunity to intervene.

While none of us are opposed to some provision for intervention, not all of us agree that the approach taken in this bill is the correct one. We are divided in our opinion and cannot, in good conscience, recommend any amendments to clause 21.

Poll of electors

Schedule 3, clause 49(1) of the current Act states that if a draft reorganisation scheme has been approved by the Local Government Commission, a poll of electors “must be held” in each district or region that is directly affected by the scheme. Reflecting the bill’s overall intent to take a more flexible approach, Schedule 1, clause 21 states that a poll “may be demanded” by a petition of 10 percent or more of eligible electors.

Removing the mandatory requirement for a poll reflects the bill's intent of streamlining procedures and giving the Local Government Commission more flexibility to develop reorganisation proposals put forward by individuals, organisations, or communities.

The ability to vote is fundamental to the democratic process, and there is concern by some that removing the requirement to hold a poll would restrict the ability of citizens to participate and have their voices heard.

We note that in the provision in Schedule 1, clause 21(4), the 40-working-day period for generating a petition is a minimum, which could be extended by the Commission.

We considered a number of proposed amendments to Schedule 1, including those by the Green Party, but are evenly divided in our opinion on them.

Interpretation

We recommend amending clause 5 to make it clear that the existing definition of "Commission" in section 5 of the Act would not apply in new Part 10. In Part 10 the term "Commission" would refer to a commission appointed under new section 258D by the Minister to act in place of the elected members of a local authority.

Orders in Council giving effect to reorganisation schemes

We recommend amending clause 12 to make it clear that an Order in Council giving effect to reorganisation schemes might make technical, clerical, or typographical corrections to the wording of a reorganisation scheme.

Role and powers of mayors

We recommend amending clause 16 to make it clear that a council could disestablish or reconstitute a committee established by a mayor, remove from office a deputy mayor or chairperson appointed by a mayor, or appoint another committee. We believe this would establish important safeguards against a mayor exercising the powers proposed in clause 16 unilaterally and without council support.

We do not support the powers proposed in clause 16 being extended to regional council chairs, as they are elected internally by the governing body, and do not have the community mandate, accountability, or expectations of mayors, who are elected “at large”.

Regulations

We recommend amending clause 22 to require local authorities to disclose, in a manner prescribed by regulations, their planned or actual performance against benchmarks or parameters in their long-term plans, annual plans, and annual reports. The amendments we propose would also require the Auditor-General to report on the adequacy and accuracy of this disclosure.

We also recommend amending clause 22 to make it clear that measurement against benchmarks or parameters could be applied to a council only, or also include council subsidiaries.

The amendments we propose would increase transparency and strengthen local authorities’ accountability to communities. We consider that public disclosure of performance would encourage local authorities to adhere to the benchmarks, and would minimise the need for additional reporting and inquiry into the affairs of individual local authorities.

Other matters

A number of other matters arose during our consideration of this bill. While they are outside the scope of the bill, we believe they raise important issues and should be brought to the attention of the House.

Rates

The issue of local authority rates, and the fact that they seem to keep rising, was raised during our consideration of the bill. We have a great deal of sympathy for those on low or fixed incomes who fear being rated out of their properties.

There is advocacy for new mechanisms for local councils to raise revenue to replace or complement rates, including regional fuel taxes, regional GST, and a local share of central taxation revenue.

Local government reporting

The Department of Internal Affairs and Statistics New Zealand both collect local government data.

Statistics New Zealand undertakes two regular local authority financial surveys—the Local Authority Financial Statistics and the Local Authority Statistics. The Local Authority Financial Statistics are the results of an annual survey of accounting-based income, expenditure, and financial-position information for each local authority; while the Local Authority Statistics is a quarterly estimate of the accounting-based income and expenditure for current operations of local authorities, at a national level.

We note that where councils use subsidiaries such as council-controlled organisations to deliver services, only transactions between the parent council and the council-controlled organisations are reported. This tends to understate the scale of local authority financial activity.

The Department of Internal Affairs gathers data at council level from published long-term plans, in order to provide information on projected trends in local authority finances. Councils have considerable flexibility, within generally accepted accounting practice, as to how data is presented, and the data covers only income and expenditure and balance sheet items.

The Local Government (Financial Reporting) Regulations 2011 require local authorities, from the 2012 long-term plan, to adopt consistent approaches to defining rates, disclosing investment in subsidiaries, and disclosing depreciation for financial reporting purposes; they prescribe a standard form for funding impact statements. We consider this to be a useful first step, but would like to see requirements for more detailed information, and for all information to be reported in as consistent and uniform a manner as is practicable.

Ethics

The issue of councillors and council staff acting ethically and professionally, and the lack of repercussions when they do not, was raised during our consideration of the bill.

The Local Government Act has limited provisions relating to individual local authority members. Most legislative provisions confer powers and responsibilities on the local authority itself, which are

then exercised collectively by the governing body. Enacting a statutory duty of care would require significant policy and legal analysis to ensure it did not unintentionally cut across the existing body of relevant common law. We note that members may be held liable for the tort of misfeasance in public office, and are subject to the Crimes Act 1961 for offences relating to misleading justice, such as false statements or declarations and fabricating evidence.

The role of the chief executive of a local authority is set out in section 42 of the Local Government Act, and includes implementing the decisions of the local authority, and providing advice to members of the local authority and its community boards. While there is no explicit provision relating to the provision of resources or the impartiality of advice, the chief executive is employed directly by the local authority and is statutorily responsible for implementing its decisions.

We consider that the rights of councillors to require information from officers are implicit in the obligation of the chief executive in section 42 of the Act to provide advice. Nothing prevents a council from setting out its expectations on these issues. Similarly, it is within the powers of councillors to question or require certification of information or advice derived from consultants or other sources.

Powers of the Auditor-General and Ombudsmen

During our consideration of the bill the question of expanding the powers of the Auditor-General or the Ombudsmen to give them a more proactive role in assessing local government activity was raised.

Section 15 of the Public Audit Act 2001 places a statutory duty on the Auditor-General to audit the financial statements, accounts, and other information that a public entity is required to have audited. However, any effectiveness and efficiency examination is to be limited to consistency with the entity's policy. Section 18 of the Public Audit Act permits the Auditor-General to inquire into any matter concerning a public entity's use of its resources. Such an inquiry is similarly limited to the extent to which the public entity is using its resources consistently with its policy.

The Auditor-General has an important role of providing independent assurance that public sector organisations are operating satisfactorily, and accounting for their performance. Some of us do not think it

appropriate to change the powers of the Auditor-General to include commenting on local authority policy decisions as well as providing independent audit functions.

The Ombudsmen may investigate any administrative decision, recommendation, act, or omission made by any committee, subcommittee, official, or member of a local authority. They may not, however, investigate the decisions of an entire authority. The Ombudsmen also have no power to direct a local authority to implement any recommendations the Ombudsmen may make.

Like those of the Auditor-General, some of us do not think it appropriate to expand the powers of the Ombudsmen. We are also aware of workload and resourcing constraints on the Ombudsmen.

New Zealand National Party view

Government members view the Better Local Government Reforms as an important component of its broader plan of rebalancing the New Zealand economy. The last decade saw excessive growth in the public sector in both local and central government at the expense of the private and exporting sectors.

There has been no credible challenge to the core statistics that underline this reform. Inflation data as recorded by the Consumers Price Index show rates between 2003 and 2010 increase nationally by an average 6.85 percent. This compares to 3 percent for the Consumers Price Index over the same years and a 3.9 percent for the preceding decade from 1993 to 2002 prior to the major local government changes in 2002 that expanded the purpose. Local government expenditure as measured as a proportion of GDP was relatively static at 3.2 percent between 1993 and 2002 has subsequently grown to over 4 percent confirming, the same trend.

Government members believe these reforms are essential to improving the fiscal responsibility and efficiency of local government. These are the first four parts of an eight-part reform package. The arguments for deferral until the future work and reviews from the Department of Internal Affairs, Productivity Commission, Efficiency Taskforce, and Auditor-General ignore the need for the process of change to get under way. Households and businesses need the benefits of these reforms as soon as possible.

New Zealand Labour Party view

Labour stands for effective and efficient local government with long term social and economic planning to be integrated with land use and other resource planning. We believe in local democracy, local empowerment, and local choice.

Labour opposes the Local Government Act 2002 Amendment Bill on six major grounds:

- There is no evidence to show the Local Government Act 2002 (LGA02) which brought in the requirement for local government to consider the economic, social, cultural, and environmental well-being (the “four well-beings”) of their communities has led to an expansion of the purpose and function of local government.
- The bill is based on misinformation and a very small number of examples, particularly in relation to rate increases and debt levels of councils between 2002 and 2011.
- The bill has been rushed, written before sufficient evidence has been gathered to support the changes. Adequate consultation had not occurred leading to confusion as to whether the changes proposed, would work.
- The “Better Local Government” reform proposals are being implemented in a back-to-front way, with a number of reviews aimed at gathering evidence, information, and providing advice are due to be reported after the passage of this bill.
- The reorganization proposals for local government are anti-democratic with the removal of an automatic poll of voters in an affected area.
- The bill leads to far greater interference in local government by the Minister of Local Government than is warranted by evidence.

The LGA02 was a fundamental change in approach to the empowerment of local government. The former prescriptive approach to specifying what councils could do and how they could do it (in the Local Government Act 1974) was replaced by broad powers enabling councils to reflect community preferences and interests. The powers are bound by detailed process requirements designed to promote transparency and accountability, and to enable effective informed public input into decision-making processes (with a limited number of ex-

PLICIT prohibitions and constraints) (page 9 Regulatory Impact Statement (RIS)).

This bill seeks to “refocus” the purpose statement of the Act on the “view” that LGA02 provides no direction as to what councils should be expected to do, and is too broad (page 7 RIS).

The RIS prepared by the Department of Internal Affairs, dated 16 March 2012 released at the time of “Better Local Government”, states on page 11, “There is no clear quantitative evidence to suggest that the LGA02 has resulted in a proliferation of new activities, or that local government is undertaking a wider group of functions”.

In response to a questionnaire sent to all councils requesting what new activities they had undertaken since 2002 only one council identified a new function.

At the AGM of Local Government New Zealand (LGNZ) in July 2012 members voted unanimously to retain the four well-beings in the Local Government Act 2002.

The majority of submissions opposed the removal of the “four well-beings”.

Justification for “Better Local Government” reform is based on data which has not been backed by evidence. Figures provided at the time of the policy release were removed from the Department of Internal Affairs (DIA) website within days of their publication. The Minister of Local Government in a letter to Labour dated 16th July 2012 wrote “you note that the department has removed the tables from its website. As noted on the website, this was because there were issues with the data both in terms of its accuracy and in terms of the picture that was being given for some council’s”.

LGNZ reported in a briefing to the incoming Minister of Local Government (April 2012) that “debt by the sector overall is still quite modest (servicing costs average approximately 5.5 percent of council income)” (p. 6). It also published a series of “facts” to refute claims that local government spending was out of control, including:

(a) Local government expenditure has remained a relatively consistent proportion of between 3 and 4 percent over the last six years.

(b) Pressure on infrastructure, such as water and roads plus encouragement by Government for councils to bring forward infrastructure projects during the global financial crisis, has caused councils to increase their investment.

(c) Local Government expenditure as a proportion of total Government expenditure has also remained relatively consistent over the last six years—the average proportion was 8.21 percent, virtually the same proportion as 2006 (8.20 percent).

A recent report released in October 2012 by NZIER entitled *Is Local Government Fiscally Responsible?* states that data from the last 10 to 20 years suggests the local government sector as a whole has NOT been fiscally irresponsible. Rates and spending have risen but the increases are not startling relative to GDP or property values. At an aggregate level, investment and borrowing also cannot be said to be irresponsibly high. Debt is low relative to assets; capital spending is steady relative to the asset base; debt servicing costs are at a responsible level. (<http://nzier.org.nz/publications/is-local-government-fiscally-responsible>)

Both DIA and LGNZ as well as many other submitters were concerned at the rushed nature of the legislation. The RIS stated that the timeframe within which the proposals have been developed has restricted the ability to assess multiple options, and the assumptions in “Better Local Government” have not or only partially been tested. LGNZ said in their briefing to the incoming Minister that “the first tranche of these changes are to be rushed through Parliament in a process that denies citizens their normal right to comment on draft legislation”. This has led to the select committee asking the department to go back to LGNZ to consult on issues.

The “Better Local Government” proposals are made up of eight points. Four relate to the legislation currently under consideration while four others relate to work to be undertaken by the efficiency task force: the Productivity Commission’s Review of Regulatory Performance; the review of local government’s role in infrastructure; and the review of development contributions. Submissions recommended reversing the proposed programme to complete this work before passing legislation. In keeping with the advice of the Chief Science Advisor to the Prime Minister, policy should be based on sound evidence and research. This bill is not based on evidence as the RIS points out (page 11).

The reorganisation proposals undermine the fundamental basis of democracy. LGA02 clearly sets out the purpose of local government is to enable democratic decision-making and action by and on behalf of communities, based on three core concepts including “effective

local choices and participation in making them”. The removal of a right to hold a ballot of ratepayers on an amalgamation proposal in their local area goes against that core concept. LGNZ pointed out in their advice to the incoming Minister that communities should be free to make decisions on local matters that directly affect them. Labour is opposed to the weakening of local decision-making by local people. Many submissions were also strongly opposed.

The powers the Minister takes under the intervention framework intrude too far into the independent operation of democratically elected local councils. Suggestions to involve LGNZ and the Audit Office in providing early advice and intervention to a struggling council were rejected by the Government in favour of ministerial intervention.

Labour believes this bill is ill considered, not based on sound evidence, but rather reflects the Government’s perception and misconceptions about local government.

Green Party view

Some 518 individuals, organisations, and local authorities took the time to write thoughtful and constructive submissions and many appeared before the committee during hearings in Auckland, Hamilton, Wellington, and Christchurch. The “vast majority” of submissions opposed the bill. Given this, the Green Party is disappointed that more weight was not given to issues raised by submitters and that Government members declined to amend the bill to reflect public and submitter concerns.

The Green Party opposes the bill particularly:

- the changes to the purpose of local government and the deletion of the “four well beings” (social, economic, environmental, and cultural)
- the increased mayoral powers
- the loss of democracy represented by the increased powers of ministerial intervention and the processes for how and when this will be used
- the content of the fiscal benchmarks
- the undemocratic procedures and criteria for council reorganisation.

Purpose of local government and “four well-beings”

The Green Party agrees with the assessment by Local Government NZ and SOLGM that: “The scale of the change signalled in this bill...[has] the potential to create the most significant change to the sector since the amalgamations and accountability review of 1989. We would have expected that such proposals would have been grounded in top quality policy analysis, and a robust assessment of all of the available evidence.

“One only need look at the first page of the RIS to conclude, that for the most part, this has not been the case”.¹

The lack of sound data and information or any robust analysis to support the changes in the bill risks it being ineffective, having unintended consequences, and putting additional costs on councils and ratepayers, such as to amend long-term plans.

Like the “vast majority” of submitters, the Green Party opposes the changes to the purpose of local government in the principal Act and the deletion of the promotion of the four community well-beings and their replacement by the narrower, more restrictive purpose in clause 7. The new purpose does not accurately describe the role of local government in New Zealand and councils’ relationship with their communities.

Many councils and community organisations highlighted councils’ central role in “place making”—creating attractive and healthy places to live and work in which attract investment capital, entrepreneurs, and skilled workers.

Submitters presented evidence on the many significant and diverse activities and services which councils provide or help support. These include early childhood education, premises for medical and health professionals, community care for the disadvantaged, funding for riparian management, crime prevention, and the arts. These matters can be as important to communities’ long-term economic viability, growth, and development as infrastructure provision.

As the Human Rights Commission observed, “Local government decisions, including how services are provided, are often the most direct expression of the democratic process (or lack of it)”.² The Green

¹ Submission of the Society of Local Government Managers (SOLGM) at p. 6.

² Submission of Human Rights Commission at p. 2.

Party believes that the change to the purpose will undermine councils' autonomy and their ability to deliver on their communities priorities.

As the Tasman District Council noted, "The benefit of the current purpose of local government stated in the LGA 2002 is that it focuses councils and communities on ensuring council activities and services provide community well-being. It enables councils to identify what is important to their specific communities and to meet the needs and preferences of those communities....

"What councils do is ultimately determined in consultation with their communities. Any council not reflecting the needs, wishes, and preferences of their communities will not last long".³

Council submissions and evidence suggested that rates increases are more likely to be the result of infrastructure provision, addressing historically deferred maintenance, and new regulatory responsibilities rather than the current statutory purpose of promoting community well-being. The Green Party agrees.

The Society of Local Government Managers (SOLGM) noted that, "there is little evidence to suggest that the sector is not focussed on so-called "core" services. Three different reports concluded that the sector has not significantly expanded the scope of its activities since 2002. Analysis of the 2006 and 2009 long-term plans (LTPs) shows that between 70 and 75 percent of the capital programme is on roads, the three waters, and flood protection".⁴

Submitters including the Auckland District Law Society noted that the new purpose will cause legal confusion and uncertainty and risks legal challenges to council decisions.

Accordingly it has a potentially "chilling" effect on council decisions if councils take a narrow view of their roles and do not invest in facilities or services other than infrastructure which are important to their communities. This potentially creates funding gaps, and risk services not being provided.

³ Submission of Tasman District Council at p. 4.

⁴ Submission of the Society of Local Government Managers (SOLGM) (July 2012) at p. 7.

Role and power of mayors

A number of submitters opposed the increased powers for mayors because of the risk this posed to a constructive and collaborative working relationship between the mayor and councillors. The Green Party endorses these concerns.

Ministerial intervention powers

As the Human Rights Commission noted, “Effective democracy demands respect between the different spheres of government and recognises the defined roles that they play in serving their citizens”.⁵ Submitters noted that the proper accountability for a council is directly to its community through consultation and electoral processes. By significantly increasing the power of the Minister to interfere with local authorities, the bill changes the balance of power and accountability from the community to the Minister and central Government. This is a significant constitutional change which has not been widely debated which undermines local democracy and democratic processes. It creates a significant risk of wide discretionary powers being transferred to non-elected appointees contrary to the other purpose of local government in the principal Act which is to enable democratic local decision-making and action by, and on behalf of communities. This is opposed.

Submitters’ concerns about these powers included the broad definition of a “problem” which “justifies” ministerial intervention by way of Crown Observer, Crown Manager, Crown Review Team, or appointed commissioners; and the absence of any checks on the ministerial power, such as a requirement for prior advice from an independent agency (such as Local Government NZ) to confirm the existence of a “significant problem”.

The Green Party shares those concerns. It opposes the low thresholds for intervention, the lack of clarity in the definitions of “problem” and “significant”, and the potential for inappropriate use of the ministerial intervention powers. It opposes the link between the fiscal benchmark requirements and the triggering of the intervention powers as giving the Minister an inappropriate amount of discretion as to when to intervene.

⁵ Submission of the Human Rights Commission at p. 6.

The Green Party is disappointed that few of submitters' many constructive and detailed suggestions to clarify and better define the intervention powers, and to require costs any appointees to be shared with central Government were implemented.

The Green Party supports submitters who suggested that other options (which would not require legislative change) would better assist councils avoid or address potential governance or financial prudence issues. These include improved governance and financial training for councillors; more guidance materials and greater assistance from experts appointed by the Local Government NZ and SOGLM; and mentoring opportunities.

Fiscal responsibility requirements

The Green Party supports the contention that local authorities must conduct their affairs in a fiscally responsible manner and keep both rates and debt at sustainable levels. It notes that the fiscal prudence of the majority of local authorities has not been questioned and that none of the councils perceived to be in difficulty has defaulted on their debt servicing obligations.

It agrees with Auckland Council and other submitters that the bill's system of financial benchmarks will degrade rather than enhance councils' ability to manage their affairs in a financially prudent way. This is because link between the financial benchmarks and the ministerial intervention powers is likely to hasten the evolution of the benchmarks into de facto caps on rates and council debt which councils would feel forced to comply with, reducing their ability to act prudently.

The Green Party supports a strengthening of the balanced budget requirements in section 100 of the principal Act as an alternative to the bill's benchmarks.

Reorganisation

As the Secretary General of the United Nations has noted: "Democracy implies far more than the mere act of periodically casting a vote...it covers the entire process of participation by citizens in the political life of their country".⁶

⁶ Secretary General of the United Nations A/46/609 and Corr.1, para 76 quoted in submission of Human Rights Commission at p. 8.

The Green Party opposes the “streamlining” of council reorganisation where this undermines the democratic right of local communities to reflect their diversity and decide their own council governance structures. As one submitter, Sarah Walters said, “This is not streamlining, it is steam rolling”.

The Green Party’s particular concerns include:

- The Local Government Commission rather than communities make the decision on reorganisation
- The lack of an automatic poll on a final reorganisation scheme and the burden on communities of having to organise a petition to achieve a poll
- The short time and large number of signatures required (10 percent of electors) for a community petition to achieve a poll
- The requirement where a poll is undertaken for this to be over the whole affected area, rather than each council area affected by reorganisation proposals
- The exclusion of “effective local community representation” and consideration of “representing communities of interest” as key criteria for assessing reorganisation proposals.

New Zealand First Party view

New Zealand First opposes the Local Government Act 2002 Amendment Bill.

While NZ First agrees there is some merit in a review of the Local Government Act 2002, caution must be exercised in tampering with core democratic principles and undermining the important second tier of New Zealand’s democratic system—local government. This represents the overwhelming sentiment of 775 written submissions and 186 oral submissions on the bill.

An amendment to the Act changes the purpose of local government “... to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses”.

This simplistic approach totally underestimates the extent to which local authorities form the basic fabric of our communities.

NZ First agrees the role of local government must be aimed at achieving the best return for ratepayer and taxpayer money, especially in the provision of world-class infrastructure. We also acknowledge that there must be some limits on non-core activities but the bill advocates the complete removal of the four well-beings (social, economic, environmental, and cultural well-being) from the purpose of the Local Government Act. This will essentially destroy the meaning of “community”, the heart and soul, and the essence of what makes a city and district a place where people want to live.

Economic well-being encourages councils to attract business and enterprise to their region such as developing conference- and tourism-related facilities. One such economic promotion is the zero fees initiative at Southland Institute of Technology, supported by local government in the region which attracts a sizeable student population that may otherwise have bypassed Invercargill.

Environmental well-being ensures councils can promote clean green policies which enhance and protect the environment; council recycling programmes and sustainable urban design are good examples of the important role that local authorities play in environmental governance.

Social well-being means councils can allocate resources to facilitate social cohesion. A prime example is the huge pressure on councils to deal with the impact of immigration which has seen massive socio-demographic transformation especially in our major cities. Central Government’s immigration policy places a high burden on councils to service social and cultural requirements as our cities become more ethnically diverse.

And finally, cultural well-being encompasses sports and festival events, expanding horizons in the arts, music, design, heritage, and activities that define a community’s character.

Those elected to local bodies represent the grassroots interest of communities, watchdogs to ensure the financial bottom line does not over-ride the greater community interest. If council was meant to be run entirely on a commercial basis, why have elected officials at all?

If the four well-beings are removed from the Local Government Act 2002 and the Local Government (Auckland Council) Act 2009, but remain in the likes of the Building Act 2004, Resource Management

Act 1991, Auckland Regional Amenities Funding Act 2008, and all the Maori Settlement Acts, this is a discriminatory double standard by the Government.

NZ First agrees with the setting of prudential legislative guidelines on rates and debt but there is a misconception that local government debt escalated because councils pandered to popular local interest side issues. This is a relatively small portion of council spending whereas the fact is local government had to respond to an enormous vacuum created by central Government in dealing with decades of infrastructure neglect.

The National Government is on record advocating increased central and local government cooperation and partnership to address infrastructure deficit to help increase New Zealand's economic productivity and competitiveness. Now that local government has responded to this request, it is chastised and criticised by central Government for rising to the challenge.

A review is needed of the burden and associated costs that central Government imposes on councils when local government is required to meet legislative requirements such as the regulation of prostitution and brothels, dog control, and liquor licensing.

NZ First is opposed to selling off local government assets to help fund council activities. We see strategic assets such as pensioner and community housing as being cost neutral, especially when taking into account the huge real estate capital gains provided from retention of such assets.

With reference to the Funding Local Government: The Report of the 2007 Independent Inquiry into Local Government Rating (the Shand report) on debt repayment, NZ First advocates exploring avenues of revenue, other than rates, such as enabling councils to set fees for all regulatory responsibilities on an "actual and reasonable" cost-recovery basis.

The widening of mayoral executive powers is a two-edged sword. The bill changes the definition of the mayor being first among equals to a presidential model. This may widen the scope for a competent mayor but there are no checks and balances in the event a dictatorial mayor goes rogue.

The local government framework was meant to be consultative and cooperative. This bill has the potential to set up combative forms

of governance which could divide mayors and councillors; it is an unhealthy model.

This bill will make it easier for the Minister to intervene and for central Government to take action against a local authority. Submissions point out it will be too easy for a central Government power grab without first exhausting all other avenues before intervention.

The changes will give central Government the power to move into local authorities and replace them with hand-picked Crown Managers and commissioners. Also, NZ First does not agree that the Minister of Local Government is able to suspend local body elections. We are against central Government's increased powers to interfere in council operational issues before first steps options are taken to authoritative sources such as Local Government NZ, the Auditor-General, and the Ombudsman.

As chair of the Local Government Review Panel, Rt Hon Sir Geoffrey Palmer refers to the democratic deficit in local government. And further, the huge disconnect between ratepayers and councils is shown by the lack of participation and interest in local politics, and often there is considerably less than 50 percent voter turnout. NZ First believes that many of the changes proposed in this bill will only serve to undermine public confidence and interest in local government democracy.

This bill poses a direct threat to the important second tier of democracy in our country and could mean that local councils end up being run exclusively by those that support the Government of the day—not controlled by those elected by the voting public. It is fundamental that communities have the democratic right to determine the local governance of their city and district. Any proposed amalgamations of local authorities should be as a result of local community acceptance and approval, not imposed on them by central Government intervention as occurred in Auckland.

Appendix

Committee process

The Local Government Act 2002 Amendment Bill was referred to the committee on 12 June 2012. The closing date for submissions was 26 July 2012. We received and considered 518 submissions from interested groups and individuals as well as a number of supplementary submissions. We heard 178 submissions, which included holding hearings in Auckland, Christchurch, and Hamilton.

We received advice from the Department of Internal Affairs. The Regulations Review Committee reported to the committee on the powers contained in clause 11.

Committee membership

Nicky Wagner (Chairperson)

Maggie Barry

Jacqui Dean

Paul Goldsmith

Gareth Hughes

Raymond Huo

Nikki Kaye

Hon Annette King

Moana Mackey

Eugenie Sage

Hon Dr Nick Smith

Andrew Williams

Local Government Act 2002 Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

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Hon David Carter

Local Government Act 2002 Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Local Government Act 2002 Amendment Act **2012**.
- 2 Commencement** 5
(1) **Section 16** comes into force on **12 October 2013**.
(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act** 10
This Act amends the Local Government Act 2002 (the **principal Act**).

Part 1
Amendments to Local Government Act
2002

- 4 Section 3 amended (Purpose)** 15
Replace section 3(d) with:
“(d) provides for local authorities to play a broad role in meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions.” 20
- 5 Section 5 amended (Interpretation)**
(1AA) In section 5(1), replace the definition of **Commission** with:
“**Commission**,—
“(a) other than in **Part 10**, means the Local Government Commission continued under section 28; 25
“(b) in **Part 10**, has the meaning given by **section 254**”.
(1) In section 5(1), replace the definition of **community outcomes** with:

- “**community outcomes** means the outcomes that a local authority aims to achieve in meeting the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions”.
- (2) In section 5(1), definition of **significance**, replace paragraph (a) with:
 “(a) the district or region.”
- (3) In section 5(1), insert in their appropriate alphabetical order:
 “**good-quality**, in relation to local infrastructure, local public services, and performance of regulatory functions, has the meaning given in **section 10(2)**
 “**remuneration and employment policy** means a policy adopted by a local authority under **clause 36A of Schedule 7**”.
- 6 Section 8 amended (Act binds the Crown)** 15
 In section 8(2)(c), replace “and Schedule 15 (which relate” with “(which relates”.
- 7 Section 10 amended (Purpose of local government)**
 (1) Replace section 10(b) with:
 “(b) to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.” 20
- (2) In section 10, insert as subsection (2):
 “(2) In this Act, **good-quality**, in relation to local infrastructure, local public services, and performance of regulatory functions, means infrastructure, services, and performance that are— 25
 “(a) efficient; and
 “(b) effective; and
 “(c) appropriate to present and anticipated future circumstances.” 30
- 8 Section 14 amended (Principles relating to local authorities)**
 (1) Replace section 14(1)(c)(iii) with:

- “(iii) the likely impact of any decision on the interests referred to in subparagraphs (i) and (ii):”.
- (2) In section 14(1)(h)(i), replace “well-being” with “interests”.
- (3) In section 14(2), delete “, or any aspects of well-being referred to in section 10, are in”.
- 5
- 9 Section 23 amended (Description of local government)**
After section 23(3), insert:
- “(3A) However, a territorial authority created as a unitary authority after the commencement of this subsection must be described as ‘[*name of city or district*] Council’.”
- 10
- 10 Section 24 amended (Reorganisation proposals)**
- (1) In the heading to section 24, replace “**proposals**” with “**applications**”.
- (2) In section 24(1), replace “reorganisation proposal” with “reorganisation application”.
- (3) In section 24(2), replace “reorganisation proposals” with “reorganisation applications”.
- (4) Repeal section 24(3).
- 15
- 11 New section 24A inserted (Transitional modification or suspension of certain statutory requirements after issue of final proposal for reorganisation)**
- After section 24, insert:
- “**24A Transitional modification or suspension of certain statutory requirements after issue of final proposal for reorganisation**”
- 25
- “(1) The purpose of this section is to authorise the extension or postponement of certain statutory requirements after public notice of a final reorganisation proposal is given, but before the fate of the final reorganisation proposal is known.
- “(2) The Governor-General may, by Order in Council, in relation to an affected local authority,—
- “(a) extend, for a period not exceeding 12 months, the time by which the local authority would otherwise have to complete, within the transition period, any action relat-
- 30

- ing to the preparation or adoption of any plan, policy, or strategy required by or under any enactment:
- “(b) postpone, to a date not more than 12 months after the date determined under section 10 of the Local Electoral Act 2001, the next triennial general election of members of the local authority. 5
- “(3) An Order in Council may be made only—
- “(a) during a transition period; and
- “(b) on the recommendation of the Minister; and
- “(c) if the Minister is satisfied that the Order in Council is— 10
- “(i) necessary to avoid public confusion or waste of public resources; or
- “(ii) in the interests of the district of the affected local authority; and
- “(d) with the agreement of— 15
- “(i) the affected local authority; and
- “(ii) the Commission.
- “(4) In this section,—
- “**affected local authority** means a local authority that would be affected if a final reorganisation proposal resulted in a re- 20
organisation scheme
- “**transition period** means the period—
- “(a) beginning on the date on which public notice is given of the final proposal under **clause 19 of Schedule 3**; 25
and
- “(b) ending on the date—
- “(i) by which a petition demanding a poll must be received by the Commission, if no petition is received; or
- “(ii) on which a poll is held, if a petition demanding a 30
poll is received by the Commission in accordance with **clause 21 of Schedule 3**.”
- 12 Section 25 amended (Order in Council to give effect to reorganisation schemes)**
- (1) In section 25(3), replace “67” with “**34**”. 35
- (2) In section 25(4), replace “Clauses 68 to 70” with “**Clauses 41 to 43**”.

- (3) After section 25(5), insert:
- “(6) ~~An Order in Council giving effect to a reorganisation scheme is not invalid because it amends the scheme if the amendments are of a verbal or formal nature or are corrections of clerical or typographical errors.~~ 5
- “(6) An Order in Council giving effect to a reorganisation scheme is not invalid because it is inconsistent with the provisions of the scheme if the inconsistency relates—
- “(a) to corrections of clerical, grammatical, or typographical errors; or 10
- “(b) to matters of a formal or referential nature that do not alter the substance or effect of the scheme.”
- 13 New section 27A inserted (Change of name of unitary authorities)**
- After section 27, insert: 15
- “27A Change of name of unitary authorities**
- “(1) A unitary authority that is described as a city council or district council may apply to the Minister to change its name to the ‘[*name of city or district*] Council’.
- “(2) The Governor-General may, by Order in Council made on the recommendation of the Minister, give effect to the application. 20
- “(3) The Order in Council may consequentially amend Part 2 of Schedule 2.”
- 14 New section 31A inserted (Minister’s expectations of Commission in relation to local government reorganisation)** 25
- After section 31, insert:
- “31A Minister’s expectations of Commission in relation to local government reorganisation**
- “(1) The Minister may, by notice in the *Gazette*, specify measures and expectations relating to the Commission’s performance of its functions and exercise of its powers under **Schedule 3**. 30
- “(2) Without limiting **subsection (1)**, the Minister may specify—
- “(a) the time frames within which the Commission is expected to complete specified matters: 35

- “(b) which reorganisation applications are to be regarded by the Commission as having a higher priority.
- “(3) The Minister may consult the Commission and any other persons and organisations that the Minister considers appropriate to consult before specifying measures and expectations under this section. 5
- “(4) The Commission must, in its report to the Minister under clause 31 of Schedule 4, describe how and the extent to which it has met the measures and expectations specified under **subsection (1)**.” 10
- 15 Section 40 amended (Local governance statements)**
After section 40(1)(j), insert:
“(ja) the remuneration and employment policy, if adopted; and”.
- 16 New section 41A inserted (Role and powers of mayors)** 15
After section 41, insert:
“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. 20
“(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. 25
“(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— 30
“(i) may make the appointment before the other members of the committee are determined; and
“(ii) may appoint himself or herself. 35

- “(3A) 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 5
 - “(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 10
 - “(d) discharging, in accordance with clause 31 of Schedule 7, a chairperson appointed by the mayor under **subsection (3)(c)**.
- “(4) A mayor is a member of each committee of a territorial authority. 15
- “(4A) To avoid doubt, a mayor must not delegate any of his or her powers under **subsection (3)**.
- “(5) 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 under **subsection (3)(a)** of this section); and 20
 - “(b) clause 25 of Schedule 7 does not apply to the election of the chairperson of a committee of a territorial authority; if the mayor of the territorial authority exercises the power in **subsection (3)(c)** of this section in respect of that committee; and 25
 - “(c) clause 30 of Schedule 7 applies to a territorial authority, except to the extent that the mayor of the territorial authority exercises the power in **subsection (3)(b)** of this section. 30
- “(5) 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)**; 35
 - “(b) clauses 25 and 26(3) of Schedule 7 do not apply to the appointment of the chairperson of a committee of a ter-

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.”

- 17 Section 42 amended (Chief executive)** 5
- (1) In section 42(2)(g), after “staff of the local authority”, insert “(in accordance with any remuneration and employment policy)”.
- (2) In section 42(2)(h), after “authority”, insert “(in accordance with any remuneration and employment policy)”.
- 18 Section 48 amended (Further provisions of Schedule 7)**
- After section 48(j), insert:
“(k) adoption of a remuneration and employment policy.”
- 19 Section 77 amended (Requirements in relation to decisions)** 15
- In section 77(1)(b)(i), replace “social, economic, environmental, and cultural well-being” with “interests”.
- 20 Section 101 amended (Financial management)**
- In section 101(3)(b), delete “current and future social, economic, environmental, and cultural well-being of the”.
- 21 Part 10 replaced**
- Replace Part 10 with:
- “Part 10**
“Powers of Minister to act in relation to
local authorities
- “253 Outline of Part** 25
- This Part confers powers on the Minister to—
- “(a) assist local authorities in certain situations; and
- “(b) intervene in the affairs of local authorities in certain situations.

“254 Interpretation

In this Part,—

“Commission means a commission appointed under **section 258D**

“Ministerial appointee means a person appointed under **sub-** 5
part 1 of this Part as a Crown Manager or a Crown Observer,
or as a member of a Crown Review Team or of a Commission

“Ministerial body means a Crown Review Team, a Crown
Observer, a Crown Manager, or a Commission appointed
under **subpart 1** of this Part 10

“problem, in relation to a local authority,—

“(a) means—

“(i) a matter or circumstance relating to the manage- 15
ment or governance of the local authority that detracts from, or is likely to detract from, its ability to give effect to the purpose of local government within its district or region; or

“(ii) the consequences of a state of emergency (within 20
the meaning of section 4 of the Civil Defence Emergency Management Act 2002) affecting, or recently affecting, the local authority’s district or region; and

“(b) includes—

“(i) a failure by the local authority to demonstrate 25
prudent management of its revenues, expenses, assets, liabilities, investments, or general financial dealings in terms of any parameters or benchmarks prescribed by regulations made under **section 259(1)(dc)**; and

“(ii) a potential problem within the meaning of **para-** 30
graph (a)(i) or subparagraph (i) of this paragraph; and

“(iii) to avoid doubt, 2 or more problems within the 35
meaning of **paragraph (a) or subparagraph (i) or (ii) of this paragraph**

“significant, in relation to a problem of a local authority, means that the problem will have actual or probable adverse consequences for residents and ratepayers within the district or region of the local authority.

“Subpart 1—Ministerial powers of assistance
and intervention

“*Minister may require information from local
authority*

- “**255 Minister may require information** 5
- “(1) The Minister may, by notice in writing, require a local authority to provide to him or her information on the nature and extent of a problem and how the local authority is addressing or planning to address the problem if the Minister believes, on reasonable grounds, that— 10
- “(a) a problem relating to the local authority may exist; and
- “(b) the local authority—
- “(i) has not publicly acknowledged the nature and extent of the problem; or
- “(ii) may be unable or unwilling to effectively address the problem. 15
- “(2) A notice must state—
- “(a) the problem; and
- “(b) the information required by the Minister; and
- “(c) the form in which the information is to be provided; and 20
- “(d) the date by which the information is to be provided.
- “(3) A local authority must respond to a notice received under this section—
- “(a) by the date stated in the notice; or
- “(b) by any other date to which the Minister has agreed. 25

“*Minister may appoint Crown Review Team*

- “**256 Minister may appoint Crown Review Team**
- “(1) The Minister may appoint a Crown Review Team to a local authority if—
- “(a) the local authority has received a notice from the Minister under **section 255** and, for no good reason, has not provided the information required by the notice by the stated or agreed date; or 30
- “(b) the Minister concludes, from information provided by the local authority under **section 255** or otherwise, that there may be a significant problem that the local authority is unable or unwilling to effectively address; or 35

- “(c) the Minister believes, on reasonable grounds, that—
- “(i) a significant problem relating to the local authority may exist; and
- “(ii) the local authority is unable or unwilling to effectively address the problem; or 5
- “(d) the Minister has received a written request from the local authority to do so.
- “(2) Before the review begins, the Minister must give notice of the appointment—
- “(a) to the local authority, in writing; and 10
- “(b) by notice in the *Gazette*.
- “(3) Each notice must comply with **section 258M**.
- “(4) The Crown Review Team must, to the extent authorised by its terms of reference,—
- “(a) investigate and report on the nature and extent of the 15
- problem; and
- “(b) make recommendations to the local authority and the Minister on how the local authority could address the problem.
- “(5) The local authority must— 20
- “(a) co-operate with the Crown Review Team so that it may fulfil its terms of reference; and
- “(b) comply with any reasonable request of the Crown Review Team to provide any relevant information that the 25
- local authority holds.
- “(6) The Crown Review Team must produce a final report that complies with **section 258O**, as soon as practicable after the review is completed.
- “(7) This section is subject to **section 258K**.
- “257 How Crown Review Team appointed 30**
- “(1) A Crown Review Team comprises 1 or more members.
- “(2) If a Crown Review Team comprises 2 or more members, the Minister must appoint 1 member as the chairperson.
- “(3) The Minister must appoint each member of a Crown Review Team by notice in writing. The notice must include the following information: 35

- “(a) the terms of reference of the Crown Review Team, including—
- “(i) an outline of the problem in relation to which it has been appointed; and
- “(ii) the extent of its authority; and 5
- “(b) the start and end dates of the member’s appointment; and
- “(c) the start and end dates of the review period.
- “*Minister may appoint Crown Observer*
- “258 Minister may appoint Crown Observer 10**
- “(1) The Minister may appoint a Crown Observer to a local authority if—
- “(a) a Crown Review Team appointed to the local authority has recommended that a Crown Observer be appointed to the local authority; or 15
- “(b) the Minister believes, on reasonable grounds, that a significant problem relating to the local authority exists and that the appointment of a Crown Observer is—
- “(i) necessary to enable, or better enable, the local authority to effectively address the problem; or 20
- “(ii) necessary to enable, or better enable, the Minister to monitor the local authority’s progress in addressing the problem; or
- “(c) the Minister has received a written request from the local authority to do so. 25
- “(2) Before the observation period begins, the Minister must give notice of the appointment—
- “(a) to the local authority, in writing; and
- “(b) by notice in the *Gazette*.
- “(3) Each notice must comply with **section 258M**. 30
- “(4) A Crown Observer must, to the extent authorised by his or her terms of reference,—
- “(a) assist the local authority to—
- “(i) address the problem; and
- “(ii) implement the recommendations of the Crown Review Team, if applicable; and 35

- “(b) monitor the local authority’s progress in relation to the problem; and
- “(c) make recommendations to the Minister on whether the Minister should take further action in relation to the local authority. 5
- “(5) The local authority must—
- “(a) co-operate with the Crown Observer so that he or she may fulfil his or her terms of reference; and
- “(b) comply with any reasonable request of the Crown Observer to provide any relevant information that the local authority holds. 10
- “(6) The Crown Observer must produce a final report that complies with **section 258O**, as soon as practicable after the observation ends.
- “(7) This section is subject to **section 258K**. 15

“258A How Crown Observer appointed

The Minister must appoint a Crown Observer by notice in writing. The notice must include the following information:

- “(a) the terms of reference of the Crown Observer, including— 20
- “(i) an outline of the problem in relation to which the Crown Observer has been appointed; and
- “(ii) the extent of his or her authority; and
- “(b) the start and end dates of the appointment; and
- “(c) the start and end dates of the observation period. 25

“Minister may appoint Crown Manager

“258B Minister may appoint Crown Manager

- “(1) The Minister may appoint a Crown Manager to a local authority if—
- “(a) a Crown Review Team or a Crown Observer appointed to the local authority has recommended that a Crown Manager be appointed to the local authority; or 30
- “(b) the Minister believes, on reasonable grounds, that a significant problem relating to the local authority exists and, for no good reason, the local authority has not adequately implemented a recommendation of a Crown 35

- Review Team or Crown Observer in relation to the problem; or
- “(c) the Minister believes, on reasonable grounds, that a significant problem relating to the local authority exists and the nature or extent of the problem is such that the local authority is unlikely to effectively address the problem without the appointment of a Crown Manager; or
- “(d) the Minister has received a written request from the local authority to do so.
- “(2) To avoid doubt, the Minister may appoint a Crown Manager to a local authority without having first appointed a Crown Review Team or a Crown Observer to the local authority.
- “(3) Before the management period begins, the Minister must give notice of the appointment—
- “(a) to the local authority, in writing; and
- “(b) by notice in the *Gazette*.
- “(4) Each notice must comply with **section 258M**.
- “(5) A Crown Manager must, to the extent authorised by his or her terms of reference, direct the local authority to act to address the problem.
- “(6) The local authority must comply with the Crown Manager’s directions and any reasonable request he or she makes to provide any relevant information that the local authority holds.
- “(7) The Crown Manager must produce a final report that complies with **section 258O**, as soon as practicable after the management ends.
- “(8) This section is subject to **section 258K**.
- “**258C How Crown Manager appointed**
- The Minister must appoint a Crown Manager by notice in writing. The notice must include the following information:
- “(a) the terms of reference of the Crown Manager, including—
- “(i) an outline of the problem in relation to which the Crown Manager has been appointed; and
- “(ii) the extent of his or her authority; and

- “(b) the start and end dates of the Crown Manager’s appointment; and
- “(c) the start and end dates of the management period.

“Minister may appoint Commission

- “**258D Minister may appoint Commission** 5
- “(1) The Minister may appoint a Commission for a local authority if—
- “(a) the Minister believes, on reasonable grounds, that—
 - “(i) a significant problem relating to the local authority— 10
 - “(A) is impairing, or likely to impair, the good local government of the local authority’s district or region; or
 - “(B) is endangering, or likely to endanger, the public health or safety of the people within the local authority’s district or region; and 15
 - “(ii) the local authority is unable or unwilling to effectively address the problem; and
 - “(iii) the problem is such that appointing a Crown Review Team, a Crown Observer, or a Crown Manager to the local authority is unlikely to prevent the consequences described in **subparagraph (i)**; or 20
 - “(b) a Crown Review Team, a Crown Observer, or a Crown Manager appointed to the local authority has recommended that a Commission be appointed for the local authority and the Minister is satisfied that the appointment is necessary to effectively address a significant problem; or 25
 - “(c) the local authority refuses or is unable to comply with a direction of a Crown Manager given under **section 258B(5)**; or 30
 - “(d) the Minister has received a written request from the local authority to do so.
- “(2) Before the Commission begins, the Minister must give notice of the Commission’s appointment— 35
- “(a) to the local authority, in writing; and
 - “(b) by notice in the *Gazette*.

- “(3) Each notice must comply with **section 258M**.
- “(4) A Commission must perform the functions and duties and exercise the powers of the local authority, and its members, under this Act and any other enactment,—
- “(a) subject only to any limits on its authority set out in the terms of reference; and 5
 - “(b) to the exclusion of the members of the local authority.
- “(5) To avoid doubt, a Commission—
- “(a) must perform any functions or exercise any powers directly conferred on the mayor or chairperson, or any other member, of the local authority by or under any enactment; and 10
 - “(b) may exercise all the powers of the local authority to set, assess, and collect rates and charges within the district or region and expend their proceeds; and 15
 - “(c) may appoint members of the local authority to a committee or subcommittee established under Schedule 7 of this Act.
- “(6) The Commission must produce a final report that complies with **section 258O**, as soon as practicable after the term of the Commission ends. 20
- “(7) This section is subject to **section 258K**.

“258E How Commission appointed

- “(1) A Commission comprises 1 or more members.
- “(2) If a Commission comprises 2 or more members, the Minister must appoint 1 member as the chairperson. 25
- “(3) The Minister must appoint each member of a Commission by notice in writing. The notice must include the following information:
- “(a) the terms of reference of the Commission, including— 30
 - “(i) an outline of the problem in relation to which it has been appointed; and
 - “(ii) any limitations on the extent of its authority; and
 - “(b) the start and end dates of the member’s appointment; and 35

- “(c) the start and end dates of the period in which the Commission is to perform the local authority’s functions and duties and exercise its powers.

“**258F Application of this and other enactments during Commission’s term of appointment** 5

- “(1) This section applies during the period in which a Commission is appointed for a local authority under **section 258D**.
- “(2) This Act applies, with any necessary modifications, as if the Commission were the local authority.
- “(3) For the purposes of clauses 31, 32, and 32A of Schedule 7, but not otherwise, this Act applies as if members of the Commission were elected members of the local authority. 10
- “(4) A document that is required to be executed under the seal of the local authority may be executed under the seal and verified by the signature of the chairperson of the Commission. 15
- “(5) All acts done by the Commission in the purported exercise of the powers of the local authority under this or any other enactment, whether the powers have been expressly limited in the terms of reference or not, are, except in the case of fraud, as valid as if the Commission had not been appointed and the acts had been done by the local authority in the ordinary course of its business. 20

“**258G Minister may postpone general election when appointing Commission**

- “(1) The Minister may, at the same time as appointing a Commission for a local authority under **section 258D**, postpone the next triennial general election for members of the local authority. 25
- “(2) **Subsection (1)** applies only if the term of the Commission extends more than 120 days beyond the date of that election as determined under section 10 of the Local Electoral Act 2001. 30
- “(3) If the Minister acts under **subsection (1)**, he or she must, before the term of the Commission ends, call a general election of the local authority by notice in the *Gazette*.

- “(4) The notice must specify the date on which the election is to be held, which must be no later than 7 days before the date on which the term of the Commission ends.
- “(5) The Local Electoral Act 2001 applies, with any necessary modifications, to the conduct of an election called by the Minister under this section as if the election were a triennial general election. 5
- “(6) Despite **subsection (5)**, the electoral officer responsible for the election must give notice of the election under section 52 of the Local Electoral Act 2001 no later than 7 days after the Minister gives notice of the election under **subsection (4)**. 10

“**258H Local authority members remain in office but must not act during term of Commission**

- “(1) **Subsection (2)** applies to each member of a local authority, including the mayor or chairperson, from the date on which a Commission appointed for the local authority under **section 258D** begins its term. 15
- “(2) A member must not act, and is not entitled in that capacity to be paid any salary, allowances, or expenses under this Act or any other enactment, but remains in office until the earliest of the following events occurs: 20
- “(a) the Commission ends its term, in which case the member resumes full power to act:
- “(b) a triennial general election is held for the local authority under section 10 of the Local Electoral Act 2001, in which case the member vacates office in accordance with section 116 of that Act: 25
- “(c) a general election is held for the local authority under **section 258G**, in which case the member vacates office on the date that the member would have vacated office in accordance with section 116 of the Local Electoral Act 2001 had the triennial general election not been postponed: 30
- “(d) a general election is held for the local authority under **section 258J**, in which case the member vacates office in accordance with section 116 of the Local Electoral Act 2001: 35

- “(e) the member vacates his or her office in accordance with clause 5(1)(a), (b), (c), or (e) of Schedule 7.
- “(3) However, if a Commission appoints a member to a committee or subcommittee in accordance with Schedule 7, the person—
- “(a) may accept the appointment, in the capacity as a person who has the skills, attributes, or knowledge that will assist the work of the committee or subcommittee; and
- “(b) is entitled to receive payment for holding office as a member of the committee or subcommittee in that capacity.
- “(4) In **subsection (2), act** means to exercise or purport to exercise a power, right, or entitlement, or perform or purport to perform a function or duty, conferred or imposed on the member in his or her capacity as a member of the local authority by this Act or any other enactment.
- “**258I Extraordinary vacancy during term of Commission**
- “(1) This section applies if an extraordinary vacancy (within the meaning of clause 5 of Schedule 7) is created during the term that a Commission is appointed to a local authority.
- “(2) The vacancy is not required to be filled if the Commission’s term ends after the date of—
- “(a) a triennial general election for the local authority under section 10 of the Local Electoral Act 2001; or
- “(b) a general election for the local authority under **section 258G or 258J**.
- “(3) The vacancy must be filled in accordance with sections 117 to 120 of the Local Electoral Act 2001 in any other case except that if the vacancy occurs more than 90 days before the end of the term of the Commission, the vacancy must be treated as if it occurred on the 90th day before that date.

“Minister may call general election

“**258J Minister may call general election**

- “(1) The Minister may, by notice in the *Gazette*, call a general election of a local authority if the Minister believes, on reasonable grounds, that the membership of the local authority is such that

the local authority is unable or unwilling to perform its functions and duties and exercise its powers.

- “(2) The notice must specify the date on which the election is to be held, which, to avoid doubt, may be a date that is earlier than the date of the next triennial general election for members of the local authority as determined under section 10 of the Local Electoral Act 2001. 5
- “(3) The Minister must give the local authority a copy of the *Gazette* notice as soon as practicable after its publication.
- “(4) The Local Electoral Act 2001 applies, with any necessary modifications, to the conduct of an election called by the Minister under this section, as if the election were a triennial general election. 10
- “(5) Despite **subsection (4)**, the electoral officer responsible for the election must give notice of the election under section 52 of the Local Electoral Act 2001 no later than 7 days after the Minister gives notice of the election under **subsection (1)**. 15

“Subpart 2—General provisions applying to Ministerial powers conferred under subpart 1

- “**258K Notice to local authority of proposed appointment of Ministerial body** 20
- “(1) Before appointing a Ministerial body, the Minister must—
- “(a) give the local authority concerned written notice that he or she intends to make the appointment; and
- “(b) state in the notice the reasons for the proposed appointment in terms of **section 256(1), 258(1), 258B(1), or 258D(1)** and the proposed terms of reference; and 25
- “(c) give the local authority an opportunity to satisfy the Minister of the following matters, as applicable, by a date specified in the notice, being no earlier than 10 working days after the date on which notice is given to the local authority: 30
- “(i) the reasons for making the appointment do not exist;
- “(ii) the local authority is acting effectively to address the problem: 35

- “(iii) for any other reason, the appointment should not be made:
- “(iv) a different Ministerial body should be appointed.
- “(2) The Minister must—
- “(a) notify the local authority, in writing, if he or she decides not to appoint a Ministerial body; or
- “(b) act under **section 256(2), 258(2), 258B(3), or 258D(2)** in any other case.
- “(3) This section does not apply if—
- “(a) the local authority has requested the Minister to make the appointment; or
- “(b) the problem in relation to which the Minister intends to make the appointment relates to the consequences of a state of emergency and the Minister believes, on reasonable grounds, that the public health or safety of the people within the local authority’s district or region is, or is likely to be, endangered.
- “258L Notice to local authority of proposed general election**
- “(1) Before calling a general election under **section 258J**, the Minister must—
- “(a) give the local authority concerned written notice that he or she intends to call the election; and
- “(b) state in the notice the reasons for the proposed election in terms of **section 258J(1)**; and
- “(c) give the local authority an opportunity to satisfy the Minister of the following matters, as applicable, by a date specified in the notice, being no earlier than 10 working days after the date on which notice is given to the local authority:
- “(i) the reasons for calling the election do not exist;
- “(ii) for any reason, the election should not be called;
- “(iii) a Ministerial body should be appointed instead.
- “(2) The Minister must—
- “(a) notify the local authority, in writing, if he or she decides not to call the election; or
- “(b) act under **section 258J(3)**.

“258M Notification of appointment of Ministerial body

“(1) A notice of appointment of a Ministerial body under **section 256(1), 258(1), 258B(1), or 258D(1)** must state the following:

“(a) that the Minister has appointed a Ministerial body; and 5

“(b) the terms of reference of the Ministerial body; and

“(c) the start and end dates of the Ministerial body’s appointment; and

“(d) the names of each member of the Ministerial body; and

“(e) if applicable, the name of the chairperson of the Ministerial body. 10

“(2) **Subsection (3)** applies if—

“(a) the notice of appointment relates to a Commission; and

“(b) the Minister has, at the same time, postponed the next triennial general election for members of the local authority under **section 258G**. 15

“(3) The notice of appointment must also state that the Minister has postponed the next triennial general election for members of the local authority and that the Minister will call a general election, by notice in the *Gazette*, before the term of the Commission ends. 20

“258N Notification of change of membership of Ministerial body

The Minister must notify any change in the membership of a Ministerial body by notice in the *Gazette*. 25

“258O Final report of Ministerial body

“(1) A final report produced by a Ministerial body must include the following:

“(a) a narrative description of the activities of the Ministerial body in relation to its terms of reference; and 30

“(b) in respect of the problem in relation to which the Ministerial body was appointed, an assessment of progress in addressing the problem; and

“(c) any recommendations of the Ministerial body to the Minister, the local authority, or both; and 35

“(d) any other matter required by the Ministerial body’s terms of reference.

- “(2) The Minister must, as soon as practicable,—
- “(a) give a copy of the report to the local authority; and
 - “(b) make the report publicly available, excluding any information that it is necessary to withhold for any of the reasons stated in section 6 or 7 of the Local Government Official Information and Meetings Act 1987. 5

“258P Remuneration and expenses of Ministerial appointees

- “(1) A Ministerial appointee is entitled—
- “(a) to receive remuneration for services as a member of a Ministerial body as determined by the Minister in accordance with the fees framework; and 10
 - “(b) to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member in accordance with the fees framework. 15
- “(2) In this section, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

“258Q Recovery of expenses from local authority 20

- “(1) A local authority owes as a debt to the Crown any expenses that the Crown incurs for the appointment of a Crown Manager or a Commission to the local authority, including the payment of remuneration and expenses to the Crown Manager or a member of the Commission. 25
- “(2) Any expenses that the Crown incurs for the appointment of a Crown Observer or a Crown Review Team to a local authority, including the payment of remuneration and expenses to the Crown Observer or a member of the Crown Review Team, may be recovered by the Crown from the local authority if— 30
- “(a) the Minister decides that to do so is reasonable in the circumstances; and
 - “(b) the terms of reference authorise the recovery.
- “(3) The Crown may recover expenses under **subsection (2)** as a debt to the Crown. 35

“258R Minister may terminate Ministerial appointee

The Minister may terminate a Ministerial appointee’s appointment at any time by notice in writing, and no compensation is payable to the person as a result of the termination.

“258S Protection from liability for Ministerial appointees

5

“(1) A Ministerial appointee is not liable for any act done or omitted to be done by him or her in good faith in the performance or intended performance of his or her functions, responsibilities and duties, or the exercise of his or her powers as a Ministerial appointee.

10

“(2) To avoid doubt, this includes—

“(a) acts done or omitted to be done by a Crown Manager when directing a local authority to act; and

“(b) acts done or omitted to be done by a Commission member when performing the functions and exercising the powers of a local authority or its members.

15

“258T Disclosure of information held by local authority

“(1) For the purposes of this Part, information held by a local authority may be disclosed to the Minister or a Ministerial appointee despite anything to the contrary in the Official Information Act 1982, the Local Government Official Information and Meetings Act 1987, or the Privacy Act 1993.

20

“(2) However, the Minister or a Ministerial appointee must not publish or disclose that information to any other person except in accordance with those Acts.”

25

22 Section 259 amended (Regulations)

(1) After 259(1)(db), insert:

“(dc) prescribing parameters or benchmarks for assessing whether a local authority is prudently managing its revenues, expenses, assets, liabilities, investments, and general financial dealings:

30

“(dd) prescribing the manner in which a local authority must disclose, in 1 or more of its long-term plan, annual plan, and annual report,—

- “(i) the planned performance of the local authority against parameters and benchmarks prescribed in regulations made under **paragraph (dc)**:
“(ii) the actual performance of the local authority against parameters and benchmarks prescribed in regulations made under **paragraph (dc)**.” 5
- (2) After section 259(2), insert:
- “(3) Regulations made under **subsection (1)(dc)** may—
- “(a) prescribe parameters or benchmarks in any manner, including by— 10
- “(i) reference to fixed terms (for example, the debt of a local authority in a financial year, generally, should not exceed a fixed sum per resident):
- “(ii) the use of ratios, factors, or other relative terms (for example, the expenditure of a local authority in a financial year, generally, should not increase by more than the ratio of population growth multiplied by the rate of increase of the Consumers Price Index): 15
- “(iii) reference to circumstances, statistics, or other publicly available information, whether only concerning local authorities and their districts and regions or otherwise; and 20
- “(b) prescribe parameters or benchmarks in a way that differentiates between different types or classes of local authority (for example, regional councils, territorial authorities, and local authorities with a population, assets, or an average income of its population over or under a specified figure); and 25
- “(c) prescribe parameters or benchmarks in a way that includes or excludes subsidiaries, including council-controlled organisations, council-controlled trading organisations, and council organisations, of a local authority. 30
- “(4) The Minister may recommend the making of regulations under **subsection (1)(dc)** only if the content of the recommendation has been developed in consultation with the New Zealand Local Government Association Incorporated.” 35

- 22A** **New section 259C inserted (Auditor-General must report on disclosures made under certain regulations)**
After section 259B, insert:
- “259C Auditor-General must report on disclosures made under certain regulations** 5
- “(1)** This section applies to the Auditor-General if regulations are made under **section 259(1)(dd)** that require disclosure of the matters set out in that paragraph in a long-term plan or an annual report.
- “(2)** The Auditor-General must report on the completeness and accuracy of the disclosures made by each local authority in the report required from him or her under section 84(4), 94(1), or 99(1), as the case may be.” 10
- 23** **Schedule 3 replaced**
 Replace Schedule 3 with the **Schedule 3** set out in **Schedule 1** of this Act. 15
- 24** **Schedule 7 amended**
- (1) This section amends Schedule 7 of the principal Act.
- (2) Replace clause 6 with:
- “6 Remuneration Authority to determine remuneration** 20
- “(1)** The Remuneration Authority must determine the remuneration, allowances, and expenses payable to—
- “(a)** mayors, deputy mayors, chairpersons, deputy chairpersons, and members of local authorities:
- “(b)** chairpersons of committees of local authorities: 25
- “(c)** chairpersons and members of community boards:
- “(d)** chairpersons of committees of community boards:
- “(e)** chairpersons and members of local boards:
- “(f)** chairpersons of committees of local boards.
- “(2)** The Remuneration Authority may also determine the remuneration, allowances, and expenses payable to the following persons, if requested to do so by a local authority: 30
- “(a)** members of the local authority with specified responsibilities other than those listed in **subclause (1)**:

- “(b) members of community boards of the local authority with specified responsibilities other than those referred to in **subclause (1)**;
- “(c) members of local boards with specified responsibilities other than those listed in **subclause (1)**. 5
- “(3) The Remuneration Authority may do 1 or more of the following things under **subclause (1) or (2)**:
- “(a) fix—
- “(i) scales of salaries:
- “(ii) scales of allowances: 10
- “(iii) ranges of remuneration:
- “(iv) different forms of remuneration:
- “(b) prescribe—
- “(i) rules for the application of those scales, ranges, or different forms of remuneration: 15
- “(ii) rules for reimbursing expenses incurred by members:
- “(c) differentiate—
- “(i) between persons occupying equivalent positions in different local authorities, community boards, or local boards: 20
- “(ii) between persons occupying equivalent positions in the same local authorities, community boards, or local boards:
- “(d) make determinations that apply to individuals, or groups, occupying equivalent positions: 25
- “(e) approve rules proposed by a local authority for reimbursing expenses incurred by members, subject to any conditions that the Authority thinks fit.
- “(4) The Remuneration Authority may direct a local authority to make publicly available any rules it has approved under **subclause (3)(e)**. 30
- “(5) The Remuneration Authority may issue separate determinations, at different times, for the different positions listed in **subclauses (1) and (2)**. 35
- “(6) **Clause 7A** applies to determinations made under this clause.
- “(7) A determination by the Remuneration Authority under this clause is a regulation under the Regulations (Disallowance) Act 1989.

- “(8) In this clause, **local boards** has the meaning given in section 4(1) of the Local Government (Auckland Council) Act 2009.”
- (3) Insert after clause 7:
- “**7A Matters applying to determinations**
- “(1) The Remuneration Authority may make a determination before or after the date on which the determination is to come into force. 5
- “(2) However, a determination must not come into force earlier than the expiry date of the determination that it supersedes.
- “(3) A determination must specify the date on which it expires. 10
- “(4) Despite the expiry of a determination, it continues in force to the extent that it is not superseded by another determination.
- “(5) The Remuneration Authority may amend a determination while it is in force.
- “(6) Despite **subclause (5)**, the Remuneration Authority may amend the expiry date of a determination only if the Authority is satisfied that in all the circumstances there are particular and special reasons that justify a period of less than the term originally set. 15
- “(7) The Remuneration Authority must review and issue a determination for each position listed in **clause 6(1)** at intervals of no more than 3 years.” 20
- (4) In clause 32(1), insert after paragraph (g):
- “(h) the power to adopt a remuneration and employment policy.” 25
- (5) After clause 36, insert:
- “**36A Remuneration and employment policy**
- “(1) A local authority may adopt a policy that sets out the policies of the local authority in relation to— 30
- “(a) employee staffing levels; and
- “(b) the remuneration of employees.
- “(2) A local authority must review a policy adopted under this clause at intervals of no more than 3 years.”
- 25 Schedule 10 amended**
- (1) This section amends Schedule 10 of the principal Act. 35

- (2) In clause 2(1)(c), delete “social, economic, environmental, or cultural well-being of the”.
- (3) In clause 23(d), delete “social, economic, environmental, or cultural well-being of the”.
- (4) After clause 32, insert: 5
- “32A Employee staffing levels and remuneration**
- “(1) An annual report must include a report on the number of employees who were employed by the local authority—
- “(a) on the last day of the financial year to which the report relates; and 10
- “(b) on the last day of the immediately preceding financial year.
- “(2) For each financial year, the report must state—
- “(a) the number of full-time employees; and
- “(b) the full-time equivalent number of all other employees; 15
- and
- “(c) the number of employees receiving total annual remuneration of less than \$60,000; and
- “(d) the number of employees receiving total annual remuneration of \$60,000 or more, expressed in bands of 20
- \$20,000.
- “(3) However, if the number of employees in any band to which **subclause (2)(d)** applies is 5 or fewer, the number for that band must be combined with the next-highest band and the statement in the report in relation to that subclause must be 25
- adjusted accordingly.
- “(4) In **subclause (2)**, **total annual remuneration** includes the value of any non-financial benefit that, during the year, was paid to an employee, or was payable to the employee, by the local authority. 30
- “(5) The report requirement in this clause applies to—
- “(a) the financial year ending 30 June 2013; and
- “(b) each following financial year.”
- 26 Schedule 15 repealed**
- Repeal Schedule 15. 35

Part 2
Transitional provision and consequential amendments

- 27 Transitional provision relating to reorganisation proposals** 5
- (1) This section applies to a reorganisation proposal made under Schedule 3 of the principal Act before the commencement of **Part 1 of this Act**.
- (2) The principal Act continues to apply to the reorganisation proposal as if **Part 1 of this Act** had not been enacted. 10
- 28 Consequential amendments**
- The enactments listed in **Schedule 2** are consequentially amended in the manner indicated in that schedule.
-

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Schedule 3—*continued***1 Interpretation**

In this schedule, unless the context otherwise requires,—

affected local authority, in relation to a reorganisation application, means a local authority that would be affected if the application resulted in a reorganisation scheme 5

applicant means the person making a reorganisation application

reorganisation application means an application containing proposals dealing with 1 or more of the matters specified in section 24 10

significant community support,—

(a) in relation to a reorganisation application and a proposal developed under **clause 12**, means—

(i) support from a large proportion of the community, or of the leaders of the community, for reform of the current local government arrangements; and 15

(ii) substantial support within that group for the changes proposed in the reorganisation application; and 20

(b) in relation to a final proposal developed under **clause 18**, means substantial support from a large proportion of the community or the leaders of the community for the changes proposed in the final proposal.

Part 1 25

Reorganisation applications

*Subpart 1—Making reorganisation applications***2 Who may make reorganisation application**

(1) A reorganisation application may be made by any person or organisation, including (but not limited to)— 30

(a) 1 or more affected local authorities; or

Schedule 3—*continued*Part 1—*continued*Subpart 1—*continued*

- (b) any body or group with an interest in the governance of the area or areas that the reorganisation application relates to; or
 - (c) the Minister.
- (2) A reorganisation application must be made to the chief executive officer of the Commission. 5
- 3 Prohibition on making certain reorganisation applications**
- No person may make a reorganisation application if—
- (a) the application relates to a local authority that has been the subject of a reorganisation scheme; and 10
 - (b) the application, if it were made, would have been made during a period (being not greater than 3 years) specified by the Commission under **clause 30**.
- 4 Contents of reorganisation application**
- (1) A reorganisation application must include the following: 15
- (a) the name and address of the person making the application; and
 - (b) if more than 1 person is making the application, the name and address of the person who is the representative of the applicants; and 20
 - (c) a description of the proposed changes, including (but not limited to)—
 - (i) which of the matters listed in section 24(1) is being sought; and
 - (ii) a plan or other description sufficient to identify 25 the area or areas concerned; and
 - (d) a description of the potential improvements that would result from the proposed changes; and
 - (e) information that shows that the application has significant community support and that it will promote good 30 local government.
- (2) A reorganisation application may include—

Schedule 3—*continued*Part 1—*continued*Subpart 1—*continued*

- (a) any information requested or recommended in any guidelines issued by the Commission; and
 - (b) any other information that the applicant considers relevant to the Commission's consideration of the application. 5
- (3) A reorganisation application may be accompanied by a petition of affected electors for the purposes of **clause 7(2)**.
- (4) If a reorganisation application is accompanied by a petition, each elector who signed the petition must state, against his or her signature, the person's name and address in sufficient detail to enable the person to be identified as an elector. 10

*Subpart 2—Commission to decline or assess
reorganisation application*

5 Action on receipt of application

As soon as practicable after receiving a reorganisation application, the Commission must— 15

- (a) decide whether to assess the application; and
- (b) notify the applicant of its decision; and
- (c) if the Commission decides to assess the application, notify the affected local authorities of its decision. 20

6 When Commission may decline to assess reorganisation application

The Commission may decline to assess a reorganisation application on 1 or more of the following grounds: 25

- (a) the application is frivolous: 25
- (b) the application does not contain the information required by **clause 4(1)**:
- (c) a substantially similar application has been declined by the Commission and the reasons for declining that application continue to apply. 30

Schedule 3—*continued*Part 1—*continued*Subpart 2—*continued*

- 7 Assessment: significant community support**
- (1) If the Commission decides to assess a reorganisation application, the Commission must first be satisfied that the application has significant community support.
- (2) The matters the Commission may consider for the purposes of **subclause (1)** include (but are not limited to)— 5
- (a) a petition or petitions of affected electors:
 - (b) questionnaires or surveys of ratepayers or residents:
 - (c) submissions or other correspondence about existing or proposed local government arrangements: 10
 - (d) meetings with community members or their representatives in which views on the existing or proposed local government arrangements are expressed.
- (3) If the reorganisation application is accompanied by a petition,— 15
- (a) the chief executive officer of the Commission must refer the application to the electoral officers of the affected local authority or local authorities to confirm the names and addresses of electors who signed the petition; and
 - (b) the electoral officers must advise the Commission of the number of qualified electors of each territorial authority district who— 20
 - (i) were entitled to sign the petition; and
 - (ii) have signed the petition.
- (4) If the Commission is not satisfied that a reorganisation application has significant community support, the Commission may— 25
- (a) decline the application without completing the assessment of it; or
 - (b) require the applicant to provide further evidence of community support; or 30
 - (c) undertake any other investigations it considers appropriate to determine community support for the application.

Schedule 3—*continued*Part 1—*continued*Subpart 2—*continued***8 Assessment: promotion of good local government**

- (1) If the Commission is satisfied that a reorganisation application has significant community support, the Commission must next be satisfied that the changes proposed in the application will promote good local government by— 5
- (a) improving local government in the area or areas that the application relates to; and
 - (b) facilitating, in the affected local authority or local authorities,—
 - (i) efficiencies and cost savings; and 10
 - (ii) productivity improvements, both within the affected local authorities and for the businesses and households that interact with those local authorities; and
 - (iii) simplified planning processes within and across the district or region through, for example, the integration of statutory plans or a reduction in the number of plans to be prepared or approved by the local authority; and 15
 - (c) ensuring that each local authority proposed to be established or changed under the application will— 20
 - (i) have the resources necessary to enable it to carry out effectively its responsibilities, duties, and powers; and
 - (ii) have a district or region that is appropriate for the efficient performance of its role as specified in section 11; and 25
 - (iii) contain within its district or region 1 or more communities of interest, but only if they are distinct communities of interest; and 30
 - (d) if the reorganisation application proposes a unitary authority, enabling catchment-based flooding and water management issues to be dealt with effectively by the unitary authority.

Schedule 3—*continued*Part 1—*continued*Subpart 2—*continued*

- (2) For the purposes of **subclause (1)**, the Commission must have regard to—
- (a) the area of impact of the responsibilities, duties, and powers of the local authorities concerned; and
 - (b) the area of benefit of services provided; and 5
 - (c) the likely effects on a local authority of the exclusion of any area from its district or region; and
 - (d) any other matters that it considers appropriate.
- 9 Commission must consider other options** 10
- In assessing a reorganisation application, the Commission must consider whether there are options for reorganisation, other than those included in the application, that might have community support and promote, more effectively, good local government.
- 10 Other things Commission may do when assessing reorganisation application** 15
- (1) The Commission may assess a reorganisation application in conjunction with any other reorganisation applications, and may combine proposals from those applications.
 - (2) The Commission may require a local authority affected by a reorganisation application to provide any information that would assist the Commission to carry out an assessment of the application. 20
 - (3) In assessing a reorganisation application, the Commission may undertake inquiries and consultations in relation to the application with any persons or organisations it considers appropriate. 25
 - (4) The Commission may suspend its assessment of a reorganisation application and return the application to the applicant for further work or information.
 - (5) If the application is returned to the applicant under **subclause (4)**,— 30
 - (a) the Commission must identify the aspects that require further work or information; and

Schedule 3—*continued*Part 1—*continued*Subpart 2—*continued*

- (b) the applicant must comply with the Commission's request before resubmitting the application.

11 Procedure after assessment

- (1) After completing an assessment of a reorganisation application, the Commission must decide to do 1 of the following: 5
- (a) decline the application:
- (b) proceed to develop a proposal under **clause 12** that would give effect to the proposals in the application:
- (c) proceed to develop a proposal under **clause 12** that would give effect to the proposals in— 10
- (i) the application as modified by the Commission; or
- (ii) the application and 1 or more other applications considered together; or
- (iii) an option considered under **clause 9**. 15
- (2) The Commission must notify the applicant and all affected local authorities of its decision.
- (3) If the Commission declines the application under **subclause (1)(a)**, it must provide the applicant with reasons for its decision. 20

Part 2

Reorganisation proposals

*Subpart 1—Preparation of proposals***12 Development of proposal**

- (1) If the Commission decides to proceed with a reorganisation application under **clause 11(1)(b) or (c)**, the Commission must develop a draft reorganisation proposal (a **proposal**). 25
- (2) A proposal must describe, for each local authority to be included in the proposal,—
- (a) the type of local authority; and 30
- (b) the name of the district or region of the local authority; and

Schedule 3—*continued*Part 2—*continued*Subpart 1—*continued*

- (c) the boundaries of the district or region; and
 - (d) the representation arrangements of the local authority; and
 - (e) the names and areas of interest of iwi and hapū in the district or region; and 5
 - (f) any communities and any community boards of the local authority; and
 - (g) any other matters the Commission considers necessary or desirable.
- (3) In preparing a proposal, the Commission may require a local authority affected by the proposal to provide information to assist the Commission to prepare the proposal. 10
- (4) In preparing a proposal, the Commission may undertake inquiries and consultations in relation to the proposal with any persons and organisations it considers appropriate. 15
- (5) In preparing a proposal, the Commission must have regard to the matters specified in **clauses 7 and 8** for the purposes of assessing a reorganisation application.
- 13 Cities** 20
- A proposal may not provide that a territorial authority is to be called a city council unless the district of the territorial authority—
- (a) has a population of not less than 50 000 persons; and
 - (b) is predominantly urban; and
 - (c) is a distinct entity and a major centre of activity. 25
- 14 Appropriate boundaries**
- In determining boundaries for a proposal, the Commission must ensure that,—
- (a) if practicable, the boundaries of regions conform with catchment boundaries; and 30
 - (b) if practicable, the boundaries of districts conform with the boundaries of regions; and

Schedule 3—*continued*Part 2—*continued*Subpart 1—*continued*

- (c) the boundaries of regions and the boundaries of districts conform with the boundaries of statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes.

15 Representation

5

In determining the representation arrangements of a local authority for a proposal, the Commission must—

- (a) provide fair and effective representation for individuals and communities of the local authority; and
- (b) comply with the requirements of the Local Electoral Act 2001; and 10
- (c) take into account the responsibilities, duties, and powers of the local authority.

16 Communities

When preparing a proposal, the Commission may consider whether good local government of any affected district would be best promoted by— 15

- (a) a system of communities and the responsibilities, duties, and powers of the community boards in the district; or 20
- (b) an alternative to an existing system of communities; or
- (c) a change in the responsibilities, duties, and powers of the community boards in the district.

17 Consultation on proposal

(1) As soon as practicable after completing a proposal, the Commission must— 25

- (a) take the action that it considers necessary to ensure that the persons and organisations who may be interested in that proposal are informed of the proposal; and
- (b) give public notice of the proposal, which must— 30

Schedule 3—*continued*Part 2—*continued*Subpart 1—*continued*

- (i) specify the location where the proposal may be inspected or how a copy of the proposal may be obtained; and
- (ii) invite submissions on the proposal; and
- (iii) specify the date by which submissions must be made to the Commission; and 5
- (c) seek the views of—
 - (i) the affected local authorities; and
 - (ii) the applicant; and
 - (iii) the Auditor-General; and 10
 - (iv) the Parliamentary Commissioner for the Environment; and
 - (v) the Secretary; and
 - (vi) the Secretary for the Environment; and
 - (vii) the chief executive of Te Puni Kōkiri; and 15
 - (viii) any affected iwi and Māori organisations identified by Te Puni Kōkiri; and
 - (ix) each local authority whose district or region adjoins the district or region of an affected local authority; and 20
 - (x) any other persons or organisations that the Commission considers appropriate.
- (2) A person or organisation that wishes to make a submission on a proposal must make the submission to the Commission by the date specified by the Commission in the public notice. 25
- (3) The Commission must consider each submission received and may hold hearings of submissions or meet with the persons making submissions or their representatives.
- (4) The Commission must grant the opportunity to meet, and be heard by, the Commission on the draft proposal to— 30
 - (a) the affected local authorities; and
 - (b) each local authority whose district or region adjoins the district or region of an affected local authority; and
 - (c) the applicant.

Schedule 3—*continued*Part 2—*continued*Subpart 1—*continued*

- (5) The Commission may also undertake, in a manner that it thinks fit, inquiries and consultations in relation to the proposal with any other persons and organisations it considers appropriate.

18 Decisions on draft proposals

- (1) After complying with **clause 17**, the Commission must— 5
- (a) develop and issue a final proposal based on a proposal developed under **clause 12**; or
 - (b) develop and issue a final proposal based on a proposal developed under **clause 12** and subsequently modified by the Commission; or 10
 - (c) decide not to proceed with the proposal and give public notice accordingly.
- (2) Before issuing a final proposal, the Commission must be satisfied that the final proposal is likely to have significant community support. 15

19 Notification of final proposal

- (1) As soon as practicable after issuing a final proposal, the Commission must—
- (a) give public notice of the final proposal and, in the notice, specify where copies of the proposal may be inspected; and 20
 - (b) take any other action that it considers necessary to ensure that the persons and organisations specified in **clause 17(1)(c)** are informed of the proposal.
- (2) The Commission must attach to a final proposal a statement explaining— 25
- (a) how the final proposal will promote good local government, having regard to the matters specified in **clause 8**; and
 - (b) the advantages and disadvantages of the final proposal. 30
- (3) The explanatory statement must outline the advantages and disadvantages of the proposal in respect of—
- (a) a proposed new or altered district or region; and

Schedule 3—*continued*

Part 2—*continued*

Subpart 1—*continued*

- (b) any remaining area of a district or region affected by the proposal; and
- (c) any changes to the responsibilities of the affected local authorities.

Subpart 2—Polls

5

20 Application of this subpart

This subpart applies to a final proposal that provides for any of the matters specified in section 24(1)(a), (b), (c), and (f).

21 Petition to require poll

- (1) If a final proposal has been issued under **clause 18(1)(a) or (b)**, affected electors may demand a poll to determine whether or not the final proposal is to proceed and become a reorganisation scheme. 10
- (2) A poll may be demanded under **subclause (1)** by a petition of 10% or more of electors enrolled as eligible to vote in the affected area. 15
- (3) The Commission must, in the public notice of a final proposal under **clause 19(1)(a)**, advise electors of—
 - (a) the opportunity to demand a poll under this clause; and
 - (b) the requirements relating to the submission of a petition under this clause; and 20
 - (c) the date by which a petition must be received by the Commission; and
 - (d) the affected area.
- (4) The date referred to in **subclause (3)(c)** must be determined by the Commission, but must not be earlier than 40 working days after the first publication of the notice under **clause 19(1)(a)**. 25
- (5) Each person who signs a petition must state, against his or her signature, the person’s name and address in sufficient detail to enable the person to be identified as an elector. 30

Schedule 3—*continued*Part 2—*continued*Subpart 2—*continued*

- (6) The chief executive officer of the Commission must send a copy of the petition to the electoral officer in each affected local authority, and the electoral officers must advise the Commission, within the time frame required by the Commission, of— 5
- (a) the number of electors enrolled as eligible to vote in the local authority area; and
 - (b) the number of those electors who have signed the petition.
- (7) To avoid doubt, a petition may be started before a final proposal is issued. 10
- (8) For the purposes of this subpart,—
- affected area** means the area or areas, as determined by the Commission, to which the final proposal applies
- petition**— 15
- (a) means 1 or more petitions submitted to the Commission that relate to the same final proposal; and
 - (b) to avoid doubt, includes a petition referred to in **sub-clause (7)**, if the petition demands a poll in relation to the implementation of a reorganisation application dealing with the same or substantially the same area as the affected area. 20
- 22 Poll to be held**
- (1) If the Commission receives a petition made in accordance with **clause 21**, a poll of electors must be held in the affected area. 25
 - (2) Except as otherwise provided in this Part, a poll under this clause must be held under the Local Electoral Act 2001 and the provisions of that Act apply, with any necessary modifications, to the conduct of the poll.
 - (3) The Commission must ensure that 1 electoral officer is designated to conduct the poll and to declare the official result of the poll under **clause 24**. 30

Schedule 3—*continued*Part 2—*continued*Subpart 2—*continued*

- (4) The costs of the poll are to be apportioned among the affected local authorities on the basis of the number of electors on the electoral rolls of the affected local authorities.

23 Timing of poll

- (1) A poll required by **clause 22** must be held on a date determined by the Commission in accordance with this clause. 5
- (2) In determining the date on which a poll is to be held, the Commission must consult the electoral officer required to conduct the poll.
- (3) The Commission must, as soon as practicable after complying with **subclause (2)**, give written notice of the date determined under **subclause (1)** to the Secretary, to the chief executive of each affected local authority, and to the electoral officer required to conduct the poll. 10
- (4) The electoral officer who receives written notification under **subclause (3)** must, within 7 days after receiving the notification, give public notice of— 15
- (a) the poll; and
- (b) the place or places at which the final proposal and the explanatory statement may be inspected. 20
- (5) The date determined under **subclause (1)** for the conduct of the poll must,—
- (a) if written notice under **subclause (3)** is to be given on or after 28 September and before 21 November in any year, be a day not earlier than 10 February and not later than 17 February in the following year; and 25
- (b) if written notice under **subclause (3)** is to be given on or after 21 November and before 16 December in any year, be a day not earlier than 7 March and not later than 14 March in the following year; and 30
- (c) if written notice under **subclause (3)** is to be given on or after 16 December in any year and before 13 January in the following year, be a day not earlier than 4 April and not later than 11 April in that following year; and

Schedule 3—*continued*Part 2—*continued*Subpart 2—*continued*

- (d) in any other case, be a day not later than 82 days after the day on which written notice under **subclause (3)** is given to the electoral officer.

24 Official result of poll

The electoral officer must,—

5

- (a) when declaring the official result of the poll under section 86 of the Local Electoral Act 2001, include a statement of—

(i) the total number of electors on the roll or rolls compiled for the purpose of the poll; and

10

(ii) the total number of valid votes cast:

- (b) as soon as practicable after declaring the result, notify the Secretary, the chief executive of each affected local authority, and the Commission of the result.

25 Fate of proposal after poll

15

- (1) If more than 50% of the valid votes cast in the poll are for a final proposal, the Commission must prepare a reorganisation scheme to give effect to the proposal.
- (2) In every other case, the final proposal must not proceed.

Subpart 3—Advertising

20

26 Interpretation

In this subpart, unless the context otherwise requires,—

advertising means advertising in any medium

poll period, in relation to a poll under **clause 22**, means the period commencing on the day after the date on which public notice of the final proposal is first given and ending with the close of the day on which the poll is held

25

publish, in relation to advertising,—

- (a) means to bring to the notice of a person in any manner, including (but not limited to)—

30

(i) displaying in any medium:

Schedule 3—*continued*Part 2—*continued*Subpart 3—*continued*

- (ii) distributing by any means:
 - (iii) delivering to an address:
 - (iv) leaving at a place:
 - (v) sending by post or otherwise:
 - (vi) printing in a newspaper or other periodical: 5
 - (vii) broadcasting by any means:
 - (viii) disseminating by means of the Internet or any other electronic medium:
 - (ix) storing electronically in a way that is accessible to the public: 10
 - (x) incorporating in a device for use with a computer:
 - (xi) inserting in a film or video; but
 - (b) excludes addressing 1 or more persons face to face.
- 27 Advertising in relation to polls**
- (1) A local authority affected by a final proposal may not, at any time in a poll period, publish any advertising that promotes or opposes the implementation of the final proposal or a provision of the final proposal. 15
 - (2) This clause does not apply to—
 - (a) any investigations or research undertaken by, or on behalf of, the local authority that relate to the final proposal or its effects; or 20
 - (b) the making of submissions or other representations to the Commission by the local authority; or
 - (c) the publication of any news or comment relating to the final proposal or the poll in any medium by any person other than the local authority. 25
- 28 Authorisation of advertising**
- (1) A person may not publish advertising that promotes or opposes the implementation of the final proposal or a provision of the final proposal unless the advertising contains a statement setting out the name and address of the person who initiated or instigated the publication of the advertising. 30

Schedule 3—*continued*Part 2—*continued*Subpart 3—*continued*

- (2) In **subclause (1)**, **address** means,—
- (a) in relation to an individual,—
- (i) the full street address of the place where the individual usually lives; or
- (ii) the full street address of any other place where the individual can usually be contacted between the hours of 9 am and 5 pm on any working day: 5
- (b) in relation to a body corporate or unincorporated,—
- (i) the full street address of the body's principal place of business; or 10
- (ii) the full street address of the body's head office.

Part 3

Reorganisation schemes

Subpart 1—Preparation of reorganisation schemes

15

29 Preparation of reorganisation scheme

- (1) This clause applies to a final proposal that is issued under **clause 18** and notified under **clause 19** and in relation to which—
- (a) no poll is held because— 20
- (i) the reorganisation proposal does not include any of the matters specified in section 24(1)(a), (b), (c), or (f); or
- (ii) the requirements for a petition under **clause 21** have not been met; or 25
- (b) a poll has been held and more than 50% of the valid votes cast in the affected area are for the reorganisation proposal.
- (2) The Commission must prepare a reorganisation scheme that—
- (a) includes any of the matters appropriate to the scheme that are specified in **clause 30**; and 30
- (b) in the Commission's opinion will promote good local government.

Schedule 3—*continued*Part 3—*continued*Subpart 1—*continued*

- (3) In preparing a reorganisation scheme, the Commission—
- (a) must consult the Secretary; and
 - (b) may consult or make inquiries of any other persons or organisations that it thinks fit.

*Subpart 2—Contents of and provisions that
apply to reorganisation schemes* 5

30 Provisions for inclusion in reorganisation schemes

- In preparing a reorganisation scheme, the Commission—
- (a) must include the matters specified in **clause 12(2)**; and
 - (b) must include the provisions that are necessary to give effect to the scheme and, in particular, must—
 - (i) include the provisions specified in **clause 31** that are considered necessary or desirable as a consequence of the scheme; and
 - (ii) include any provisions that are considered necessary for the purposes of any affected district or region, or for the discharge of the responsibilities of the local authority of any such district or region, or for any other matter that is necessary or desirable to give effect to the provisions; and
 - (c) may provide that the provisions of **clause 34**—
 - (i) apply to the scheme with modifications; or
 - (ii) do not apply; and
 - (d) may provide for the application, with the modifications that may be necessary or desirable, of any provisions of any Act for the time being in force that are considered appropriate to the particular matter; and
 - (e) may make provision for any arrangements the Commission considers necessary or desirable to assist in the transition to a new local authority, including but not limited to—
 - (i) the establishment of a transition committee or committees under **clause 32**; and

Schedule 3—*continued*Part 3—*continued*Subpart 2—*continued*

- (ii) the appointment by a transition committee of an interim chief executive to a new local authority; and
- (f) may specify a period for the purposes of **clause 3**; and
- (g) may incorporate any other matters that it considers necessary or appropriate to give effect to the proposal. 5

31 Provisions to be included if necessary or desirable

If considered necessary or desirable, the following provisions may be included in a reorganisation scheme:

- (a) provisions determining the nature or constitution of a new local authority: 10
- (b) provisions necessary for the first or any election or appointment of members of a local authority or community board affected by the scheme:
- (c) provisions that are necessary for the effective transition and future carrying out of responsibilities that are to be transferred from one local authority to another local authority: 15
- (d) provisions dealing with the requirements and application of long-term plans, annual plans, and annual reports as provided for under this enactment: 20
- (e) provisions dealing with the requirements in any enactment that relate to plans, programmes, and strategies, including (but not limited to) regional land transport programmes and regional land transport strategies under the Land Transport Management Act 2003: 25
- (f) provisions dealing with—
 - (i) the administration of an existing, proposed, or operative district plan or regional plan under the Resource Management Act 1991: 30
 - (ii) the administration of any designations, resource consents, and notices of requirement under the Resource Management Act 1991, but subject to sections 81 to 180 of that Act:

Schedule 3—*continued*Part 3—*continued*Subpart 2—*continued*

- (g) if an area is included in the district of another territorial authority, provisions that the civil defence emergency management group plan for the district in which the area is included applies to the area so included and is the only operative local civil defence plan to apply in that area: 5
- (h) if a new district or region is constituted, provisions that every civil defence emergency management group plan that is in force in respect of any area included in that district or region continues in force until a new plan is prepared and approved for the district under the Civil Defence Emergency Management Act 2002: 10
- (i) provisions for committees for the first term of the new local authority and membership and responsibilities of those committees:
- (j) provisions dealing with the apportionment or disposition of the assets and liabilities of all or any of the local authorities affected by the scheme, which provisions may include the date on which any of the apportionment or disposition takes place or may be treated as having taken place: 20
- (k) provisions concerning rating in a new district or region, or enlarged district or region, which may—
- (i) specify the date by which a single integrated rating system must be adopted in the district or region; and 25
- (ii) specify the valuation system for any general rate forming part of the initial integrated rating system; and
- (iii) specify the basis on which rates may be set and assessed within the district or region between the date the order takes effect and the date specified under **subparagraph (i)**, which may include the use of different rating systems for specified rates, or for specified rates in different parts of the district or region; and 30 35

Schedule 3—*continued*Part 3—*continued*Subpart 2—*continued*

- (iv) make such other provision for the transition to, or implementation of, the single integrated rating system as the Commission considers desirable:
- (l) if a district or region is abolished and the whole or any part of it is included in the district or region of another local authority, provisions for the representation of the district or region being abolished or part of it on the other local authority until the next triennial general election of members of the other local authority. 5
- 32 Provisions to enable effective transition** 10
- If provision is made for the establishment of a committee or committees to assist the transition to a new local authority, the Commission may—
- (a) determine, or provide for the determination of, the membership of each committee: 15
- (b) appoint, or provide for the appointment of, the chairperson of each committee:
- (c) determine the functions and powers of each committee:
- (d) require each committee to take any other steps the Commission considers necessary for the transition to the new local authority: 20
- (e) apportion costs of the functioning of each committee between the affected local authorities:
- (f) apportion costs of the appointment of the interim chief executive: 25
- (g) take any steps the Commission considers necessary to monitor, and make recommendations in relation to, the transition to the new local authority.

Schedule 3—*continued*Part 3—*continued**Subpart 3—Implementation and effect of reorganisation schemes***33 Application**

This subpart applies in relation to a reorganisation scheme on and from the date the scheme is given effect to by an Order in Council under section 25. 5

34 Provisions that apply to reorganisation scheme unless modified or excluded

The following provisions apply to a reorganisation scheme unless amended by the reorganisation scheme or declared by the reorganisation scheme not to apply: 10

- (a) the local authority that assumes, under the scheme, jurisdiction over an area formerly comprising or forming part of a separate district or region, or that takes over the responsibilities of a local authority, has, and may exercise, and is responsible for,— 15
 - (i) all the powers, duties, acts of authority, and responsibilities that were previously exercised by the former local authority, or that would have been exercised by it if it had remained in existence or in control of that area: 20
 - (ii) all the liabilities, obligations, engagements, and contracts that were previously the responsibility of the former local authority, or that would have been its responsibility if it had remained in existence or in control of that area: 25
 - (iii) all the actions, suits, and proceedings pending by or against the former local authority, or that would have been its responsibility if it had remained in existence or in control of that area: 30
- (b) the responsibilities, duties, and powers of the mayor, chairperson, and chief executive of the former local authority must be exercised by the mayor, chairperson, and chief executive of its successor:

Schedule 3—*continued*Part 3—*continued*Subpart 3—*continued*

- (c) all real and personal property vested in an abolished local authority vests in its successor, subject to all existing encumbrances:
- (d) a local authority that assumes jurisdiction over an area that was formerly part of a separate district or region has, subject to all existing encumbrances, vested in it all the land situated in that area that was vested in the local authority that formerly had jurisdiction over that area: 5
- (e) all bylaws in force in the district or region of an abolished local authority, or in the part of a district or region included in another district or region, that are applicable to the altered circumstances of the new controlling local authority are to be treated as the bylaws of that local authority, and those bylaws remain, until revoked or altered by that local authority, in force in the area in which they were in force immediately before the abolition or the alteration of boundaries, and, if those bylaws cannot be restricted to that area, they must be treated as inapplicable and revoked by the abolition or alteration of boundaries: 10 15 20
- (f) all rates or levies and other money payable in respect of an abolished local authority, or of an area of land included in the district or region of another local authority, are due and payable to the new local authority: 25
- (g) if the area of an abolished district or region comprises part only of another district or region, any money to the credit of the abolished local authority's accounts must, after all liabilities have been provided for, be expended to the benefit of the residents of that area, and any money required to be paid into the accounts of the abolished local authority to meet any deficiency must be raised within the area of the abolished local authority: 30
- (h) the rights or interests of creditors of a district or region must not be affected: 35

Schedule 3—*continued*Part 3—*continued*Subpart 3—*continued*

- (i) the valuation rolls, electoral rolls, and rate records in force in the district or region of an abolished local authority, or in relation to any part of the district or region of a local authority included in the district or region of another local authority, continue in force in the district or region of the new controlling local authority until those rolls or records are made by that local authority, and, until that time, the Local Government (Rating) Act 2002 applies: 5
- (j) except in the circumstances specified in clause 1, 2, 4, or 5 of Schedule 7, if part of a district or region is excluded from that district or region and included in another district or region, the members of the local authority of the first-mentioned district or region continue to be members of that district or region as if that part had not been excluded from the district or region. 15

35 Effect of Order in Council giving effect to reorganisation scheme

An Order in Council giving effect to a reorganisation scheme does not affect— 20

- (a) any separate rate or special rate, and every such rate continues to be charged on the whole of the area of land on which it was charged before the making of the order and does not, for that reason, become a charge on any additional area; and 25
- (b) the area within which, and the purposes for which, any unexpended loan money may be expended.

36 Power to amend basis of certain rates

- (1) Despite **clause 35**, a local authority constituted by an Order in Council giving effect to a reorganisation scheme may, with the approval of the Commission, make and levy a rate for the purpose of meeting the annual charges for a special loan (within 30

Schedule 3—*continued*Part 3—*continued*Subpart 3—*continued*

the meaning of the Local Authorities Loans Act 1956) raised by any of the former authorities.

- (2) A rate made and levied under **subclause (1)** may be made and levied only over the area of the district of the local authority (being an area different from that over which the loan is secured) that the Commission agrees is benefiting or will benefit from the undertaking or amenity for which the special loan was raised. 5
- (3) This clause does not authorise any alteration to the area over which any special loan is secured. 10

37 No compensation payable if responsibility transferred

- (1) If provision is made in a reorganisation scheme for a responsibility to be transferred to, or assumed by, a local authority, provision may not be made for the payment of compensation to the local authority from which that responsibility is transferred or assumed. 15
- (2) This clause applies subject to **clauses 38 and 42**.

38 Payment if trading undertaking transferred

- (1) If a reorganisation scheme provides for the transfer of a trading undertaking from a local authority (the **transferor**) to any other local authority (the **transferee**), the transferor may request the Commission to determine whether any payment for the transfer of the trading undertaking should be made by the transferee to the transferor and, if so, the amount of the payment. 20 25
- (2) The Commission may, in considering a request under **subclause (1)**, require the local authorities to each appoint an independent person as an assessor to report to the Commission on whether any payment should be made.
- (3) The costs incurred by assessors must be met jointly by the local authorities appointing the assessors. 30

Schedule 3—*continued*Part 3—*continued*Subpart 3—*continued*

- (4) The Commission may make a determination under this clause subject to any conditions that it considers desirable.

39 Certain matters not affected by transfer of responsibilities, duties, or powers

A reorganisation scheme does not—

- (a) place a local authority or other person in breach of contract or confidence or otherwise make the local authority or other person guilty of a civil wrong; or
- (b) give rise to a right for a person to terminate or cancel any contract or arrangement, or to accelerate the performance of an obligation; or
- (c) place a local authority or other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of property or the disclosure of information; or
- (d) release a surety wholly or in part from an obligation; or
- (e) invalidate or discharge a contract or security.

40 Registers

- (1) The Registrar-General of Land or other person charged with the keeping of books or registers is not required solely by reason of an Order in Council giving effect to a reorganisation scheme to change the name of the transferor to that of the transferee in those books or registers or other documents.
- (2) The presentation to the Registrar-General of Land or other person of an instrument, whether or not comprising an instrument of transfer by the transferee, is, in the absence of proof to the contrary, sufficient evidence that the property is vested in the transferee if the instrument—
- (a) is executed, or purports to be executed, by the transferee; and
- (b) is related to property held by the transferor; and

Schedule 3—*continued*Part 3—*continued*Subpart 3—*continued*

- (c) contains a recital that the property has become vested in the transferee by virtue of an Order in Council giving effect to a reorganisation scheme under this Act.

41 General

- (1) This clause applies if, under a reorganisation scheme, a local authority assumes jurisdiction over an area formerly comprising a separate district or region, or formerly constituting a defined part of the district or region from which it was excluded. 5
- (2) If this clause applies, the local authority—
- (a) has and may exercise, unless the Order in Council states otherwise, all the powers to raise a loan, or the part of the loan that has not already been raised, that could have been exercised by the local authority that had resolved to raise the loan if it had remained in existence or in control of the part excluded from its district or region; and 10 15
- (b) is subject to the same duties, obligations, and liabilities that were, or would have been, imposed on the local authority that had resolved to raise the loan if it had remained in existence or in control of the part excluded from its district or region if, under the scheme,— 20
- (i) 2 or more districts or regions are united, whether or not of the same kind; or
- (ii) a district or region is included in another district or region, or is abolished; or 25
- (iii) a part of a district or region that is or includes a part of the district or region that is separately defined for the purposes of the loan is excluded from the district or region and is constituted as a new district or included in another district or region; and 30
- (c) before the union, inclusion, abolition, or exclusion, the local authority of an area formerly comprising a separate district, or of the district or region from which the

Schedule 3—*continued*Part 3—*continued*Subpart 3—*continued*

part was excluded, had resolved to raise a loan, being a loan for the benefit of that defined part, but had not raised the loan, or had raised only part of the loan, and the resolution has not lapsed.

- (3) If, on the addition of an area to a district of a territorial authority, a liability is imposed on the local authority, a special rate made and levied as security for a loan raised under **subclause (2)** may be made and levied over the whole district or, if the special order to raise the loan so provides, over the added area. 5
- (4) If part of a district or region is excluded from that district or region and included in another district or region, the remaining part of the first-mentioned district or region continues to be the same district or region. 10
- 42 Apportionment of assets and liabilities**
- (1) If an Order in Council or a reorganisation scheme does not make provision for the apportionment of the assets and liabilities of the local authorities affected by the order, the local authorities may, by agreement, determine the manner in which those assets and liabilities must be apportioned. 15
- (2) If an agreement is not entered into by the local authorities concerned within 3 months after the date of the coming into force of the order, a local authority directly affected may apply to the Commission for an order apportioning assets and liabilities, and the Commission must make an order directing the manner in which assets and liabilities must be apportioned among the local authorities concerned. 20 25
- (3) For the purpose of deciding an application to the Commission under **subclause (2)**, the Commission—
- (a) must consult the Auditor-General and the local authorities directly affected; and 30
- (b) may make the inquiries that it thinks fit; and

Schedule 3—*continued*Part 3—*continued*Subpart 3—*continued*

- (c) may obtain advice from any other person who, in the opinion of the Commission, has expert knowledge concerning any aspect of the matter to be decided.
- (4) In the exercise of its powers under **subclause (2)**, the Commission may identify the assets and liabilities to be transferred, and assets and liabilities to be transferred must include all amounts and items that properly ought to be treated as being of the same character irrespective of how they may be described in the accounts or records of any local authority. 5
- (5) An order of the Commission under **subclause (2)** may be enforced as if it were an agreement between the local authorities concerned. 10
- (6) For the purposes of the Income Tax Act 2007, the Goods and Services Tax Act 1985, and the Accident Compensation Act 2001, a local authority constituted under a reorganisation scheme is deemed to be the same local authority as each of the local authorities whose district, region, or functions are wholly transferred to that local authority. 15
- 43 Apportionment of fuel tax revenue**
- (1) This clause applies if, under an Order in Council giving effect to a reorganisation scheme,— 20
- (a) any proceeds of a fuel tax levied under Part 11 of the Local Government Act 1974 are distributed among the component authorities affected by the proposal in accordance with Part 11 of that Act; and 25
- (b) either—
- (i) a new district of a component authority is constituted comprising or including only part of another such district then existing; or
- (ii) the boundaries of the district of a component authority are altered by the inclusion of an area of land forming part of another such district. 30
- (2) Despite Part 11 of the Local Government Act 1974, the component authorities whose districts have respectively been in-

Schedule 3—*continued*Part 3—*continued*Subpart 3—*continued*

creased and decreased in area and the component authority for the newly constituted district may, by agreement, determine the basis on which the proceeds of a final tax levied under that Part are distributed among them until the expiration of the year commencing on 1 July on or after the day on which the Order in Council comes into force. 5

- (3) **Clause 42(3) to (5)** apply as if an order of the Commission under **clause 41(2)** were an order determining an issue under **subclause (2)** of this clause. 10
- (4) Nothing in this clause has the effect of altering the provisions of Part 11 of the Local Government Act 1974 in respect of the proportion of the proceeds of any tax distributed under that Part to any constituent authorities whose districts are not altered by the Order in Council or other instrument. 15
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Schedule 2

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Consequential amendments

Local Electoral Act 2001 (2001 No 35)

In section 19Z(5)(b), replace “section 255(1)(b) or Schedule 15” with “**section 258G or 258J**”. 5

In section 19ZG(2)(c) and (4)(c), replace “section 255(1)(b) or Schedule 15” with “**section 258G or 258J**”.

In section 24A(3) and (4), replace “section 255(1)(b) or Schedule 15” with “**section 258G or 258J**”.

In section 24D(3) and (4), replace “section 255(1)(b) or Schedule 15” with “**section 258G or 258J**”. 10

In section 27(4)(b), replace “section 255(1)(b) or Schedule 15” with “**section 258G or 258J**”.

In section 34(1)(c) and (2)(c), replace “section 255(1)(b) or Schedule 15” with “**section 258G or 258J**”. 15

Local Government (Auckland Council) Act 2009 (2009 No 32)

Replace section 10(b) with:

“(b) better enabling the Auckland Council to give effect to the purpose of local government within the local board area.” 20

In section 32A, replace “sections 254 to 257” with “**Part 10**”.

In section 32A, replace “those sections and Part 1 of Schedule 15 of that Act apply” with “that Part applies”.

Receiverships Act 1993 (1993 No 122)

In the Schedule, clause 3, replace “Commissioner appointed under section 255 or section 258 of the Local Government Act 2002 or to a commission appointed under clause 14 of Schedule 15 of that Act” with “Commission appointed under **section 258D** of the Local Government Act 2002”. 25

Receiverships Act 1993 (1993 No 122)—*continued*

In the Schedule, clause 4, replace “the appointment of a Commissioner under section 255 or section 258 of the Local Government Act 2002 or to a commission appointed under clause 14 of Schedule 15 of that Act” with “a Commission appointed under **section 258D** of the Local Government Act 2002”.

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Legislative history

30 May 2012
12 June 2012

Introduction (Bill 27–1)
First reading and referral to Local Government and
Environment Committee
