

# Departmental Disclosure Statement

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Local Government Act 2002 Amendment Bill (No 2)
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Internal Affairs.

The Department of Internal Affairs certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

25 May 2016

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## Part One: General Policy Statement

The Local Government Act 2002 Amendment Bill (No 2) implements a set of reforms to enable improved service delivery and infrastructure provision arrangements at the local government level. The Bill contributes to the delivery of key government priorities to deliver better public services and build a more productive and competitive economy.

New Zealand's local authorities need to adapt their governance arrangements and structures to lift performance and respond to emerging challenges. Councils need more options to co-ordinate and combine networks and scarce resources across regions and towns, especially for large-scale infrastructure. However, current models and the existing council reorganisation process are not flexible enough.

Current arrangements limit councils' ability to adequately respond to and provide for regional and sub-regional economic and population dynamics while remaining responsive to local preferences. As a result, some services are provided suboptimally because of lack of scale, integration, and strategic oversight across local government jurisdictions.

The current legislation provides only limited support for shared and integrated services, which is insufficient to enhance scale and capability for water, transport, economic development and other activities. This Bill provides for a broader range of functions to be transferred between local authorities, joint governance arrangements for areas of common or shared interest, and greater use of joint council-controlled organisations (CCOs) for providing services. New models introduced in the Bill include water services CCOs with statutory powers and 2 'pre-approved' models for transport CCOs as well as bespoke transport CCOs subject to approval from the Minister of Transport.

The Local Government Act 2002 (the Act) currently allows the Local Government Commission (the Commission) to respond to applications for reorganisation submitted by councils or members of the community, but it cannot initiate investigations. This Bill provides discretionary powers to the Commission to enable it to decide what investigations it will undertake. This will be either on its own initiative or in response to a request from the Minister of Local Government, local authorities, or members of the public.

The increased powers of the Commission in the Bill are accompanied by appropriate checks and balances. The Commission will have to follow statutory guidance for reorganisations; it will be guided by criteria about what it investigates, the processes by which it does so (including public engagement) and what it seeks to achieve. The use of polls will remain where the Commission proposes to abolish, constitute or amalgamate local authorities. Polls will also be introduced for a major transfer of water, transport or Resource Management Act 1991 functions from one local authority to another.

Currently, the Act does not allow local authorities to take responsibility for developing, refining, and consulting on reorganisation proposals. The Bill includes a provision for local authority-led reorganisations, with the objective of securing the support of all

affected local authorities and communities, and endorsement by the Commission. This will be available for all types of reorganisation, including the establishment of multiply owned CCOs, joint governance arrangements, transfers of powers, boundary changes, and amalgamations.

There is also scope for better, more streamlined regional services and arrangements that will provide better value for money for citizens. The Bill will enable the Commission, as part of a reorganisation, to provide for:

- the same local authority to act as a unitary authority (as both territorial authority and regional council) in one district and as regional council only in another district that has its own territorial authority; and
- a local authority to exercise specified council functions, powers, duties and responsibilities within the district or region of another local authority.

The Commission will be able to provide for ongoing committees or other governance mechanisms to ensure appropriate representation and accountability under such arrangements.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>One regulatory impact statement was produced to inform the policy decisions that led to this Bill: <i>Options for improving local government services</i>, March 2016.</p> <p>This RIS was prepared by the Department of Internal Affairs. It is accessible at the following link, under the 'local government heading':</p> <p><a href="https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Regulatory-Impact-Statements-Index?OpenDocument">https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Regulatory-Impact-Statements-Index?OpenDocument</a></p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>YES</b>
<p>On 1 March 2016 the RIA Team in Treasury provided the following independent opinion of the quality of the regulatory impact statement mentioned above:</p> <p>"The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached.</p> <p>The Regulatory Impact Analysis Team (RIAT) has reviewed the regulatory impact statement (RIS) for the above legislative/regulatory proposal and considers that the information and analysis summarised in the RIS <b>partially meets</b> the quality assurance criteria.</p> <p>Causes of the lack of inter-council cooperation and service sharing under the status quo are well described, as are the proposed approaches to addressing them. Implementation plans are well described and risks and mitigations appropriately analysed.</p> <p>The importance of Council willingness and capability, and public acceptability, to the successful use of greater flexibility and choice is made clear. This highlights that the lack of wider consultation with local government and information about LGNZ and the reference group leaves a significant gap."</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
It has not been possible to quantify the costs and benefits associated with the policies to be given effect by this Bill. Many of the proposed amendments to the legislation are designed to encourage and enable councils to operate and provide services more efficiently and effectively (in a variety of ways). The extent to which this occurs, and any cost savings and other benefits achieved, will depend on if/how each council takes up the opportunities provided.	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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No relevant international obligations were identified. This was confirmed by referring to Appendix 3 of the Legislation Advisory Committee, <i>Guidelines on Process and Content of Legislation (2001 edition)</i> , which contains a list of legislation that implements various treaties.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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Specific consideration of the principles of the Treaty of Waitangi was not considered necessary because the policy given effect by this Bill will not alter councils' current obligations under the Local Government Act 2002 to give effect to Treaty principles. These include requirements for councils to establish processes to provide opportunities for Māori to contribute to decision-making and to foster the development of capacity for Māori to contribute to decision-making.
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Provisions in the Bill to facilitate the establishment of multiply-owned council-controlled organisations (CCOs) will not allow councils to avoid complying with these existing legal obligations. Councils will have the necessary oversight of, and tools to influence, CCOs to ensure that CCOs act consistently with the councils' obligations. For example, councils will be able to include requirements for CCOs to engage with Māori and iwi in a CCO's statement of intent.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice, or reports, will be accessible on the Ministry's website at: <a href="http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/">http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/</a>
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>

### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
Councils, relevant sector groups and iwi were engaged with on the full range of policy proposals prior to introduction of the Bill during a series of engagement meetings. The response to engagement was generally in the nature of questions regarding the detail of the proposals. A small working party made up of current and former local government members and staff was brought together to test some of the policy proposals.	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
While the Bill was being prepared, a draft for consultation was circulated (in confidence) to officials at the Local Government Commission. This was done to test and refine potential wording and concepts in the Bill.	



## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>YES</b>
<p>This Bill will enable the exercise of existing compulsory acquisition powers under the Public Works Act 1981 by different entities – council-controlled organisations instead of local authorities. However, provisions in the Bill to strengthen the accountability and transparency of council-controlled organisations will support local authority oversight and governance of those entities.</p>	

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
<p>Development contributions are a form of levy or charge imposed on developments by territorial authorities in order to recover a portion of the costs those local authorities have incurred in providing infrastructure for development.</p> <p>A provision in the Bill establishes a process for a council-controlled organisation to require its territorial authority or authorities to amend it or their development contributions policies to fund capital expenditure by the organisation. This amendment will ensure that existing funding powers for the provision of community facilities, including network infrastructure, remain available, even if those services are provided by council-controlled organisations rather than directly by local authorities. The Bill also extends these provisions to an Auckland water organisation, which achieves a consistent set of funding provisions across all council-controlled organisations throughout New Zealand.</p> <p>Another provision, which includes inserting new section 61D, prevents a substantive council-controlled organisation imposing a capital charge for connection to, or for authority to use, infrastructure services provided by that organisation (other than a development contribution).</p>	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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## Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
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## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>

The Bill amends section 259, which sets out the regulations that may be made under the principal Act. These regulation-making powers will be extended to:

- enable rules for non-financial performance measures for services in addition to network infrastructure;
- enable the Minister of Local Government to direct the Secretary for Local Government to make new or additional rules for particular activities and to obtain the Minister of Local Government's approval to any rules to be made;
- add a power to the principal Act enabling prescribed disclosure of corporate accountability information in corporate accountability documents, to be made by Order in Council upon the Minister of Local Government's recommendation;
- add a power enabling the prescribed disclosure of community satisfaction information in corporate accountability documents, to be made by Order in Council upon the Minister of Local Government's recommendation; and
- enable existing and new performance information disclosure requirements, financial and non-financial, to be applied to council-controlled organisations.

In any case where regulations or rules are proposed in the Bill, regulatory impact analysis would be undertaken at that time.

This is an extension of the Minister of Local Government's current ability to specify comparable financial information local authorities must provide. In addition, the Act requires the Secretary of Local Government to make rules prescribing non-financial performance measures for network infrastructure services – roads, water supplies, sewage treatments and disposal, storm water and flood protection works.

The extension of these regulation-making powers would enable the collection of comparable local government data on which to develop a national data set or to base decisions about rewarding or incentivising good local government performance.

The Bill replaces section 25 with new sections 25 and 25A. The replacement sections amend the process for Orders in Council that give effect to local authority reorganisations. These new sections outline that Orders in Council will need to be recommended by the Minister of Local Government (rather than directly by the Local Government Commission) to the Executive Council. This change would bring the process for Orders in Council into line with standard practice. The legislation would require the Minister of Local Government to recommend an Order in Council unless he or she was satisfied that the Local Government Commission had not acted in accordance with its mandate and legislation.

### Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>This Bill contains provisions that amend the powers of an existing statutory entity – the Local Government Commission. The Bill inserts new sections 31B to 31H.</p> <p>These provisions include new accountability requirements for the Local Government Commission that align with those required of a crown entity, including:</p> <ul style="list-style-type: none"><li>• providing the Minister of Local Government a Statement of Intent at least once every three years;</li><li>• the ability for the Minister of Local Government to direct the Local Government Commission to have regard to government policy;</li><li>• the ability for the Minister to review the operations and performance of the Local Government Commission at any time; and</li><li>• the Local Government Commission must provide the Minister with an annual report.</li></ul> <p>These new accountability requirements and powers of the Minister of Local Government are appropriate checks and balances to match the Local Government Commission's new discretionary powers in the Bill.</p>	