

Priority Urgent

THE DEPARTMENT OF INTERNAL AFFAIRS

Te Tari Taiwhenua

Local Government Briefing

Hon Rodney Hide
Minister of Local Government

Copy to: Hon John Carter
Associate Minister of Local Government

Title: Letter to Chair of Regulations Review Committee

Date: 30 July 2009

Key issues

This briefing notes issues raised by the Chair of the Regulations Review Committee in his letter to you and provides a response for your signature

Action sought	Timeframe
Agree to sign and send the attached letter responding to the issues raised by the Chair of the Regulations Review Committee Note that officials from DIA and PCO will attend the Committee's meeting on 6 August 2009.	Friday 31 July 2009

Contact for telephone discussion (if required)

Name	Position	Telephone		Suggested first contact
		direct line	after hours	
Anne Carter	Deputy Secretary	04 495 9323	021 229 6261	
Marilyn Little	Director Policy	04 494 0589	021 228 8118	✓

Return to: Linda Taylor
DMS file reference: 615844DB
Ministerial database reference: LGC200902613

Purpose of briefing

- 1 This paper recommends that you sign and send the attached letter to Charles Chauvel, Chair of the Regulations Review Committee.


Background

- 2 The Chair wrote to you on 23 July 2009 setting out a series of concerns about provisions in the Local Government (Auckland Council) Bill (the Bill), currently being considered by the Auckland Governance Legislation Select Committee. The letter is attached to this briefing note.
- 3 The letter raises issues around three areas in the Bill:
 - delegation of discretionary powers to the Local Government Commission to make substantive policy decisions;
 - sub-clause 20(4), which amends primary legislation, the Local Government Act 2002; and
 - exclusion, under sub-clause 20(7), of the usual publication and disallowance processes which apply to regulations.
- 4 We have drafted a written response to the Committee, which is attached for your signature. The letter addresses the Committee's concerns in detail.
- 5 John Sutton from the Department of Internal Affairs and Leeanne O'Brien from Parliamentary Counsel Office will also meet with the Committee on 6 August 2009 to discuss the issues that the Committee has raised

Recommendations

6. It is recommended that you:

- a) Sign the attached letter to the Chair of the Regulations Review Committee;
- b) Note that staff from the Department of Internal Affairs and Parliamentary Counsel Office will meet with the Committee on 6 August 2009.


Anne Carter
Deputy Secretary
Local Government and Community

Hon Rodney Hide
Minister of Local Government



Office of Hon Rodney Hide

MP for Epsom
Minister of Local Government
Minister for Regulatory Reform
Associate Minister of Commerce

Charles Chauvel
Chair
Regulations Review Committee
Room 2.037 Parliamentary Library
PARLIAMENT BUILDINGS

Dear Charles

LOCAL GOVERNMENT (AUCKLAND COUNCIL) BILL

Thank you for your letter of 23 July 2009 requesting clarification on the regulation making provisions in clauses 18, 19 and 20 of the Local Government (Auckland Council) Bill.

You have raised issues around three areas:

- delegation of discretionary powers to the Local Government Commission (LGC) to make substantive policy decisions under clauses 18(1) and 19(1);
- sub-clause 20(4), which amends primary legislation, the Local Government Act 2002; and
- exclusion, under sub-clause 20(7), of the usual publication and disallowance processes which apply to regulations.

Delegation of powers to the Local Government Commission

The functions and activities of the LGC are set out in the Local Government Act 2002. These are essentially the same as in the Bill. The LGC's main task is to make decisions on the structure of local government. These functions include the issues around setting of and altering boundaries and the Bill merely restates the provisions of the Local Government Act 2002.

In addition, the Bill sets out some tight parameters in which the LGC must exercise its powers. These are significantly tighter than those applying to reorganisation schemes under the Local Government Act.

The powers you refer to in your paragraph 17 concerning the Secretary for Local Government are also the same as in the Local Government Act 2002. I consider that the requirement in clause 20(3) of the Bill that additional matters to be included in an Order in Council be "necessary, desirable, or incidental as a consequence of the determination" places some constraint on the power. I consider that the purpose of any additional matter included must be to support the main purpose of the determination.

The equivalent provision in the Local Government Act 2002 was used on a number of occasions in respect of the 1989 New Zealand wide reorganisation of local government to deal with minor matters, without any apparent controversy.

Since 1989 my officials are aware that it has been used only once – to include an additional transitional provision in the Local Government (Banks Peninsula District) Reorganisation Order 2005, permitting the Christchurch City Council to incorporate the former Banks Peninsula District Council's partially completed process on adopting a policy on dangerous, earthquake-prone, and unsanitary buildings into the City Council's own process.

Henry VIII clause amending primary legislation

The Legislation Advisory Committee (LAC) Guidelines provide best practice guidelines for the process and content of legislation. The LAC guidelines say that a provision allowing for the making of regulations to amend the empowering Act should be used in exceptional circumstances. In my view, the changes in Auckland governance are indeed exceptional circumstances. Even so, it is commonly understood that such issues are used in transitional arrangements, which the LAC guidelines also allow.

In addition this provision is necessary because not every provision in clause 67 of Schedule 3 of the Local Government Act 2002 will be appropriate in each individual case. An examination of previous decisions indicates that the power to set aside provisions of clause 67 (or its predecessor provisions) has been used infrequently and for relatively minor or administrative requirements.

An example is clause 67 of the Local Government (Waikato Region) Reorganisation Order 1989 which gave affect to the scheme for the reorganisation of the Waikato Region. This clause provided that a number of properties situated in the new Hamilton City should be vested in the new Waikato District Council. As I understand it, this is because those properties related to services that would be provided for the Waikato District

Given the specificity of such issues, I consider that the LGC is best placed to make judgments as to whether the provisions of clause 67 should apply in particular circumstances.

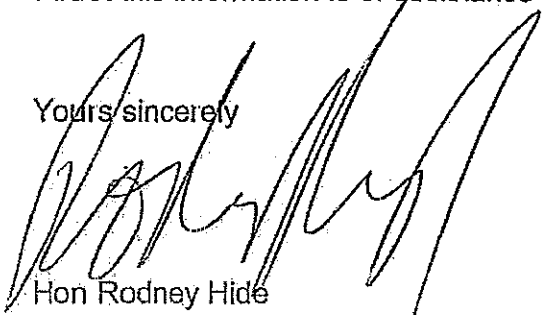
Exclusion of usual publication and disallowance processes

This provision is consistent with the treatment of Orders in Council that implement LGC schemes under the Local Government Act 2002. These Orders in Council are gazetted, generally have no ongoing legal effect (i.e. are spent immediately after they come into force) and are administrative in nature.

I understand the meeting of the Regulations Review Committee has now been rescheduled to 6 August 2009. Staff from the Department of Internal Affairs and Parliamentary Council Office will be in attendance to brief the Committee.

I trust this information is of assistance to the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rodney Hide', written over the 'Yours sincerely' text.

Hon Rodney Hide

Minister of Local Government

Proactively Released by the Minister of Local Government