

OFFICE OF THE MINISTER OF LOCAL GOVERNMENT

Chair
Cabinet Business Committee

LOCAL GOVERNMENT TRANSPARENCY, ACCOUNTABILITY AND FINANCIAL MANAGEMENT – REVISED PROPOSAL FOR A LOCAL GOVERNMENT PERFORMANCE MEASUREMENT SYSTEM

Executive Summary

1. This paper seeks approval to different machinery arrangements for introducing mandatory performance measurement systems for local government infrastructure from those Cabinet previously agreed. It proposes that responsibility be reallocated from Standards New Zealand, an autonomous Crown entity, to the Secretary for Local Government.¹ It also seeks explicit approval to a levy on local authorities to recover the cost of preparing performance measurement systems. Finally, the paper proposes one minor amendment to proposed information disclosure requirements to maintain consistency with other similar requirements.

Background

2. On 27 October 2009, Cabinet adopted proposals for reforming local government planning, decision-making and financial management to improve the transparency and accountability of local government (CAB Mins (09) 38/16; (09) 38/17; (09) 38/18 and (09) 38/19 refer).

3. In particular, Cabinet agreed:

That the Local Government Act 2002 (the Act) provide for:

1. *a system of standard measurement systems for local authority services;*
2. *responsibility for preparing measurement standards to lie with Standards New Zealand;*
3. *mandatory development of accredited performance measurement systems for water supply, sewage treatment and disposal, stormwater drainage, flood protection and roading;*
4. *inclusion of performance targets for mandatory performance measurement systems in council long-term council community plans, annual plans and annual reports. (CAB Min (09) 38/16 paragraph 15 refers).*

Cabinet agreed that this system would take effect from 30 June 2014 (CAB Min (09) 38/16 paragraph 34.2 refers).

4. The policy principles underlying this proposal are:
 - ratepayers need comparative financial and non-financial information to hold their councils accountable;
 - the local government sector should be deeply involved in developing the performance measures; and

¹ The Secretary for Local Government is the Chief Executive of the Department of Internal Affairs.

- a performance measurement system should not be a lever for central government to set service delivery standards for local government as this would undermine local autonomy.
5. Standards New Zealand develops standards by drawing in relevant expertise and consulting widely on its proposals. Using Standards New Zealand would effectively promote a process of self-regulation for local government.

Issues

6. The Ministry of Economic Development and Parliamentary Counsel Office (PCO) have raised three concerns with this proposal's machinery.
7. The primary concern is to ensure a clear statutory authority for a levy to recover the costs of developing these rules from local government. Standards New Zealand is self-funding. It normally obtains the funds for any project from a single purchaser through a contract. To provide it with a statutory role of this type would require that it also be given a power to levy local authorities to recover its costs. This would allow a Crown entity to set a levy that is not subject to the usual safeguards that regulations setting levies must face.
8. The second concern is about the appropriateness of delegating regulatory powers to a Crown agency. PCO considers that it is more usual to delegate regulatory powers to the Executive. While several Crown entities enforce regulations or recommend the making of regulations there are few cases where they directly make regulations. Where Crown entities make rules, those rules are often given force by incorporating them by reference in regulations.
9. The third concern is that by assigning this role to a Crown entity legislatively, that entity gains a commercial advantage over potential competitors. There may be other entities that can prepare the performance measure systems (the systems) as effectively as Standards New Zealand and at a lower cost.

Alternative Approach

10. I propose as an alternative approach a system similar to that used to prepare rating valuation rules under the Rating Valuations Act 1998. Statutory responsibility for developing the systems would be given to the Secretary for Local Government. The responsibility would include consultation requirements and the systems prepared would be subject to the Regulations (Disallowance) Act 1989. In practice, the Secretary for Local Government would probably contract an entity, such as Standards New Zealand, to prepare the systems.
11. In addition, the Act would authorise making regulations that allow the Secretary to recover from local government, by way of a levy, the reasonable costs of preparing the systems and amending them when necessary.
12. This process is a little more convoluted than originally proposed and some people may perceive the Secretary for Local Government as having less independence from the Executive than a Crown entity. However, this approach meets the constitutional and policy concerns of the Ministry for Economic Development and PCO while achieving the desired policy outcomes.
13. Another option would be for the Local Government Commission (the Commission) to prepare the systems. The Commission's role has been to deal with local authority structures and representation, although section 30 of the Act authorises the Commission to promote good practice relating to local government. However, giving this role to the Commission would require

consideration of the skills needed by commissioners. It could also create workload problems as preparing the first systems would coincide with representation reviews for the 2013 local authority elections. Therefore, this option is not being recommended.

Disclosure requirements

14. The reform proposals include a number of standard disclosure requirements to improve the transparency of council affairs to ratepayers. In particular Cabinet agreed:

That the Local Government Act 2002 be amended to require each council to show:

- *for each activity, the total of any internal loans applied to that activity, reductions and increases in the balance of those loans, and interest charges on those loans. (CAB Min (09) 38/16 paragraph 7.2 refers).*
15. Council plans and reports provide information for groups of activities rather than for individual activities. Reporting this information for individual activities will add unnecessary compliance costs and be inconsistent with other reporting at this level. I propose that this decision be amended to require this information to be reported for groups of activities.

Consultation

16. Local Government New Zealand and the Society of Local Government Managers were consulted on this paper. They oppose allocating this function to the Secretary because of lack of independence from the Executive. They also oppose any cost imposition on local government.
17. The Ministry for Economic Development, the Treasury and the Office of the Auditor-General were consulted on this paper. The Department of the Prime Minister and Cabinet was informed of the paper.

Financial implications

18. I expect a cost in the order of \$1.26 million spread over the three financial years from 2011/12 to 2013/14 to implement these proposals. If a collaborative approach can be negotiated with local government to produce these systems, the cost may be lowered considerably. I recommend the cost be recovered from local government and therefore be fiscally neutral to the Crown. This could best be facilitated through an appropriation with expenses restricted by revenue in Vote Local Government. I propose that Cabinet authorise myself and the Minister of Finance to jointly establish the necessary appropriation at a suitable baseline update.

Human rights, disability perspective and gender implications

19. There are no human rights, disability or gender implications associated with this paper.

Legislative Implications

20. This paper proposes amendments to the Act and subsequently making regulations under that Act. Cabinet has previously invited me to issue drafting instructions to the PCO to prepare amendments to the Act. The amendments proposed in this paper will be incorporated into those instructions.

Regulatory Impact Analysis

21. A Regulatory Impact Statement (RIS) was prepared at the time previous proposals were submitted to Cabinet. This RIS was prepared under the requirements that applied prior to 2 November 2009. The RIS has been updated to reflect the new proposals and a copy of the amended section of the RIS is annexed. The Department of Internal Affairs assessed the previous RIS as adequate and also assesses the amended RIS as meeting the adequacy criteria.

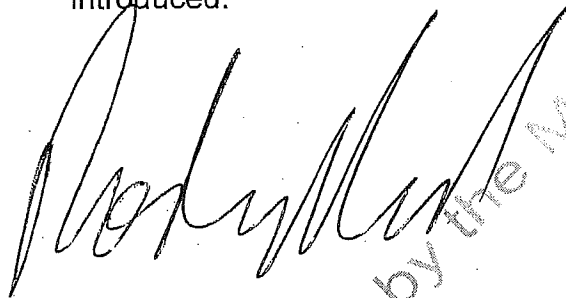
Publicity

22. It should be possible to complete the drafting of the Bill to implement these proposals and introduce it to the House within a few weeks of Cabinet making this decision. I propose that this paper also be proactively released at the time the Bill is introduced and that I make an appropriate explanation of the change.

Recommendations

23. I recommend that the Committee:
1. **note** that on 27 October 2009 Cabinet agreed that the Local Government Act 2002 (the Act) provide for:
 - 1.1. a system of standard measurement systems for local authority services;
 - 1.2. responsibility for preparing measurement standards to lie with Standards New Zealand;
 - 1.3. mandatory development of accredited performance measurement systems for water supply, sewage treatment and disposal, stormwater drainage, flood protection and roading;
 - 1.4. inclusion of performance targets for mandatory performance measurement systems in council long-term council community plans, annual plans and annual reports. (CAB Min (09) 38/16 paragraph 15 refers);
 2. **note** that alternative arrangements can achieve the Government's policy intention and introduce competition into the regulation making process, with potential cost reductions for local government;
 3. **rescind** Cabinet's decision that responsibility for preparing measurement standards lie with Standards New Zealand (CAB Min (09) 38/16 paragraph 15.2 refers);
 4. **agree** that the Act provide for:
 - 4.1. responsibility for preparing performance measurement systems to lie with the Secretary for Local Government (the Secretary);
 - 4.2. the Secretary to be required to consult relevant stakeholders in preparing performance measurement systems;
 - 4.3. performance measurement systems to be subject to the Regulations (Disallowance) Act 1989;
 5. **agree** that, to maintain fiscal neutrality, the Act's regulation power be extended to allow the making of regulations for the Secretary to recover, by way of a levy, the reasonable costs of preparing and maintaining measurement standards from local authorities;

6. **rescind** Cabinet's decision that the Act be amended to require each council to show, for each activity, the total of any internal loans applied to that activity, reductions and increases in the balance of those loans, and interest charges on those loans (CAB Min (09) 38/16 paragraph 7.2 relates);
7. **agree** that that the Act be amended to require each council to show, for each group of activities, the total of any internal loans applied to that group of activities, reductions and increases in the balance of those loans, and interest charges on those loans;
8. **note** that an appropriation for expenses restricted by revenue in Vote Local Government would be the most appropriate vehicle to implement this proposal;
9. **authorise** the Minister of Local Government and the Minister of Finance jointly to establish the necessary appropriation for expenses restricted by revenue at a suitable baseline update;
10. **note** that the amendments to the Act proposed in this paper will be incorporated into drafting instructions to the Parliamentary Counsel Office; and
11. **note** that the Minister of Local Government will communicate the changed proposal as part of the overall communication package when the Bill is introduced.



Hon Rodney Hide
Minister of Local Government

23/2 /2010

Proactively Released by the Minister of Local Government

IMPROVING LOCAL GOVERNMENT TRANSPARENCY, ACCOUNTABILITY AND FINANCIAL MANAGEMENT – AMENDED SECTION OF REGULATORY IMPACT STATEMENT

Standardised non-financial performance measurement information for major council services

89. A related proposal is to further enhance transparency with comparative non-financial data on levels of service. Providing this kind of standardised data, often referred to as benchmarking, could help to inform ratepayers about what they are getting for their money.
90. It is proposed that the Act provide for the development of a system of performance measurement for council services. This would be mandatory for the essential infrastructure services that have the greatest impact on councils' finances – roading, water supply, sewage treatment and disposal, storm water drainage, and flood protection. Performance targets for the mandatory measures would be included in councils' long-term council community plans, annual plans, and annual reports. Specific targets would be set by each council. No targets would be specified in the measurement system. Quality assurance would be achieved through auditing annual reports.
91. Responsibility for developing the measurement systems will lie with the Secretary for Local Government. The Secretary will be required to consult with relevant stakeholders in preparing the systems. This approach is similar to the approach for developing rating valuation rules contained in the Rating Valuations Act 1988. In practice it is likely that the Secretary would contract a third party to prepare the systems.
92. Allocating this responsibility to the Secretary recognises that the task of preparing measurement systems is quite technical in nature. It is also intended to minimise concerns that the systems could become an indirect method for government to dictate performance targets to local government.
93. Alternative system preparers to the Secretary were considered. These were Standards New Zealand (SNZ), the Minister of Local Government, and the Local Government Commission.
94. SNZ is a user-funded autonomous Crown entity that specialises in developing standards for a variety of purposes, using a consensus-based approach. It is required by the Standards Act 1988 to ensure that decisions are supported by those with an interest in the standard; therefore, local government and other interested agencies would be heavily involved in this process. However, situations in which Crown entities are delegated regulation-making powers are quite rare as the accountability to Parliament is weaker than that of the Executive. Crown entities with significant regulatory roles usually enforce regulations set by the Executive or Parliament. Nor would allocating this function to SNZ achieve independence from the Executive in practice. This is because SNZ may not amend, revise, revoke or replace any standard cited in a regulation without the approval of the Minister responsible for that regulation.
95. Having the Minister prepare the measurement systems is likely to arouse strong fears within local government of the Government decreasing local autonomy through the system setting process.

96. The Local Government Commission's role has been to deal with local authority structures and representation, although section 30 of the Local Government Act 2002 authorises the Commission to promote good practice relating to local government. Giving this role to the Commission would require consideration of the skills needed by Commissioners and could create a conflict in workload in preparing the first measurement systems and in carrying out representation reviews for the 2013 local authority elections.
97. DIA has estimated the total cost of preparing five standards in the order of \$1.26 million. This includes the cost of contracting an entity (or entities) to prepare the standards, costs of procurement and contract supervision, independent peer review of the contractor's work and consultation with interested parties. Divided among 78 councils, this amounts to less than \$3,500 per council per system on average. Some councils may also be required to gather data they have not previously collected, which could have additional costs for those councils.
98. It is suggested that there be a longer lead time for implementing this proposal, to allow standards to be developed and give councils time to set up suitable data collection systems.

Proactively Released by the Minister of Local Government