Local Government Regulatory Systems Bill

Proposal

1. This paper seeks Cabinet’s approval for minor amendments to core local government legislation to be included in a Local Government Regulatory Systems bill.

Executive summary

2. I propose to make twelve changes to the principal Acts that form the core local government regulatory system. The changes are minor and seek to improve and maintain the effectiveness and efficiency of the regulatory system established by the principal local government Acts.

3. The changes fall into two categories:
   - efficient operations and administration; and
   - effective local governance and representation.

4. The changes will correct errors and update the legislative framework to ensure that the local government regulatory system is up to date, fit for purpose, and minimises compliance costs. I discuss a full list of proposed amendments at paragraph 19 and in annexes A and B.

5. The proposed bill would amend the following Acts:
   - Local Government Act 2002;
   - Local Government Act 1974;
   - Local Government (Auckland Council) Act 2009;
   - Local Government Official Information and Meetings Act 1987;
   - Dog Control Act 1996;
   - Local Electoral Act 2001; and

Background

6. Over time, provisions in the principal Acts of the local government regulatory system have become outdated. This has had the effect of inhibiting the operational efficiency of local government. Legislative drafting errors have entered the regulatory framework, affecting the interpretation and the certainty of specific statutory provisions. In addition, there are opportunities to improve the regulatory system to enable councils to meet changes in community expectations.

7. The Department of Internal Affairs (the Department) has reviewed aspects of the local government legislative framework, in consultation with key stakeholders and identified a number of opportunities to improve the effectiveness of the regulations.
8. I propose an omnibus bill to amend several local government-related Acts is the most suitable vehicle to progress the identified opportunities. Local government operates under various legislative provisions on a day-to-day basis. The proposed amendments are necessary for the maintenance of these provisions and to ensure that they remain fit for purpose, and do not create barriers to effective local service delivery. This is a key part of the Department’s stewardship role in relation to local government regulation [CAB Min (13) 6/2B refers].

9. An omnibus bill to address these matters would be consistent with the findings of the July 2014 Productivity Commission report, “Regulatory institutions and practices”. The Productivity Commission found that it can be difficult to find time on the Parliamentary calendar for “repairs and maintenance” of existing legislation. As a result, some regulatory regimes have fallen out of step with public or political expectations, and many regulatory agencies have to work with legislation that is out of date or unfit for purpose. This creates unnecessary costs for regulators and regulated parties (for example individuals, property owners, businesses).

Policy

10. I am proposing minor changes to local government legislation that will maintain an efficient operating environment for councils and central agencies, and update the requirements for local governance and representation. I propose to use a Regulatory Systems bill (omnibus bill) to make these changes. Standing Order 263(a) provides that an omnibus bill to amend more than one Act may be introduced, if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

11. The policy objective is to ‘improve and maintain the effectiveness and efficiency of the regulatory system established by the principal local government Acts’. The proposed amendments will achieve this objective by:

11.1 clarifying and updating statutory provisions to give effect to the intended purpose of the Act and its provisions and keep the regulatory system up to date and relevant;

11.2 addressing regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation; and

11.3 removing any unnecessary compliance costs.

12. To achieve these objectives, I propose to make minor changes to the legislative framework to improve the efficiency and effectiveness of local authority operations and governance.

Efficient operations and administration (see Annex A)

13. In some circumstances, the current local government regulatory system is increasing the compliance costs for local authorities and in some instances central agencies. These additional compliance burdens occur where the system restricts a local authority from taking advantage of more efficient processes to achieve the same or a better outcome.
14. Although the proposed changes are minor, a reduction in compliance costs for councils should result in better value for money for rate payers. For example, to improve efficiency while maintaining the current policy intent, I propose a change to standardise the definition of a ‘working day’. This definition underpins time-limited council processes like applications to undertake a regulated activity. For example building consents, resource consents and consultation periods have minimum and maximum periods based on a specified number of working days. Local authorities currently work with three different definitions for a working day. Two of those definitions come from the regulatory framework addressed by this Bill.

15. The proposed changes will correct several errors in the principal Acts to minimise ambiguity within the regulatory system. Ambiguous provisions can increase the litigation risk for a local authority, and can result in wasted time and resources spent interpreting complex or erroneous drafting. For example, although the support categories for veterans were updated in 2014 with the Veterans’ Support Act 2014, the Rates Rebate Act 1973 did not reflect the changes in language. This has created an ambiguity for those responsible for determining an applicant’s eligibility for rates relief. I am proposing changes that will clarify the original policy intent to prevent a person’s allowances and pensions from Veterans’ Affairs from having an impact on their eligibility for a rates rebate.

Effective local governance and representation (see Annex B)

16. The local government regulatory system should enable local authorities to carry out their purpose as effectively as possible. There are elements of the regulatory system that could be updated to ensure the regulatory system is fit for purpose.

17. I am proposing changes which address constraints on improvements to service delivery and decision making. An example is a proposed change to require public notices to be placed on council websites, making these notices easier to find, alongside any related information.

18. Democratically-effective local decision making can be limited by the representativeness of the membership of an elected council. An elected council may become less representative if participation in local elections declines or certain groups exhibit low rates of voter turnout. To encourage participation in local elections where low voter turnout is an issue, I am proposing to provide a mandate to local authorities to facilitate participation in local elections. This was a recommendation from the Justice and Electoral Committee, following its review of the 2013 local elections. This approach is consistent with the mandate given to the Electoral Commission under the Electoral Act 1993.

Proposed changes

19. A Local Government Regulatory Systems bill would provide an efficient vehicle to ensure that the principal legislation forming the local government regulatory system remains fit for purpose. I propose the following changes to the local government regulatory system (detailed descriptions of each change are annexed to this paper):

---

1 Both the Resource Management Act 1991 and the Building Act 2004 contain a definition for ‘working day’ that varies from the core local government legislation. Amending these definitions is outside the scope of the proposed Local Government Regulatory Systems bill.
19.1 Efficient operations and administration:

19.1.1 Standardise the meaning of "working day" (recommendation 2.1);

19.1.2 Clarify the public notification requirements for the creation of a pedestrian mall (recommendation 2.2);

19.1.3 Clarify the organisations permitted to certify Disability Assist Dogs (recommendation 2.3);

19.1.4 Clarify war veterans' eligibility for rates rebates (recommendation 2.4);

19.1.5 Remove the requirement for a statement on rates limits in council financial strategies (recommendation 2.5); and

19.1.6 Reduce local government filing requirements and improve document accessibility (recommendations 2.6 and 2.7).

19.2 Effective local governance and representation:

19.2.1 Require digital public notices (recommendation 2.8);

19.2.2 Align delegation and sub-delegation powers (recommendation 2.9);

19.2.3 Clarify the meaning of extraordinary meetings (recommendation 2.10);

19.2.4 Correct a mismatched offence for advertising during reorganisation referendum period (recommendation 2.11);

19.2.5 Create a mandate to facilitate voter participation in local elections (recommendation 2.12); and

19.2.6 Clarify the timing of taking office by a successful candidate following a by-election (recommendation 2.13).

Consultation

Consultation with other government agencies

20. In the preparation of this paper the Department has sought feedback from the Office for Disability Issues; Ministry for the Environment; Ministry of Business, Innovation and Employment; Ministry of Transport; Parliamentary Library; Te Puni Kōkiri; Treasury; and Ministry of Justice. All substantive issues raised by these agencies have been addressed.

21. The Department informed the Department of Prime Minister and Cabinet.

Public consultation

22. Local Government New Zealand, the Society of Local Government Managers and Auckland Council were consulted during the process of identifying regulatory issues and the development of the policy proposals. The Department has engaged with the Office of the Auditor General and the Parliamentary Library in preliminary discussions about matters that impact the operations of those agencies.

23. The detailed final proposals were referred to Local Government New Zealand and the Society of Local Government Managers. These organisations have provided in principle support for the proposed amendments.
24. The Minister of Local Government has agreed to the submission of this paper in accordance with the delegation to the Associate Minister of Local Government, of all matters relating to a potential Local Government Regulatory Systems bill.

Financial implications

25. There are no financial implications arising from this paper.

Human rights, gender implications and disability perspective

26. The proposed requirement for documents to be made publicly available on council websites in accessible formats is likely to improve access to information for the visually and physically impaired. There are no other human rights, disability or gender implications associated with this paper.

Legislative implications

27. Under the 2016 Legislation Programme, the Regulatory Systems Bill has been allocated to category 5: to be referred to a Select Committee in 2016. The intention is that drafting instructions will be provided to Parliamentary Counsel Office in August 2016. The Bill would be ready for introduction by December 2016. The proposed bill will not impact the local elections in October 2016.

Regulatory impact analysis

28. The Department confirms that it has complied with the principles of the Code of Good Regulatory practice and the regulatory impact assessment requirements. A Regulatory Impact Statement (RIS) attached has been reviewed by the Department’s Regulatory Impact Analysis Review Panel. The Panel commented, “The Department of Internal Affairs’ RIS panel has reviewed the Local Government Regulatory Systems Omnibus Bill, in accordance with the quality assurance criteria set out in the CabGuide. The Panel considers that the RIS meets all the criteria and requirements for a Regulatory Impact Analysis”.

Recommendations

29. The Associate Minister of Local Government recommends that the Committee:

1. note that the proposed Local Government Regulatory Systems bill is an omnibus bill that would improve legislation within the local government regulatory system administered by the Department of Internal Affairs;

2. agree that the following changes be included in a Local Government Regulatory Systems bill:

   Efficient operations and administration

   2.1 amend the Local Government Act 2002 to standardise the meaning of "working day" with the definition in the Local Government Act 1974 and the Local Government Official Information and Meetings Act 1987;

   2.2 amend section 336 of the Local Government Act 1974 to require public consultation in accordance with the principles of consultation in section 82 of the Local Government Act 2002, when proposing to create a pedestrian mall;
2.3 amend the Dog Control Act 1996 definition of Disability Assist Dog in section 2 to refer to a schedule to the Act that lists the organisations that are currently authorised to certify Disability Assist Dogs and enable that schedule to be updated by Order in Council;

2.4 amend the Rates Rebate Act 1973 to clarify that all impairment compensation pensions and allowances paid by Veterans’ Affairs under the Veterans’ Support Act 2014, are not included as income when determining eligibility for a rates rebate;

2.5 amend sections 93C and 101A of the Local Government Act 2002 to remove the requirement for the inclusion of a statement on the quantified limit on rates in a council long-term plan and consultation documents;

2.6 amend the following Acts to remove the requirement to file the following documents with the Secretary for Local Government, Auditor-General and the Parliamentary Library:

2.6.1 Council Long-Term Plan – s93(10)(b) Local Government Act 2002;

2.6.2 Annual Plan – s95(7)(b) Local Government Act 2002;

2.6.3 Annual Report and Summary – s98(6) Local Government Act 2002;

2.6.4 Rating resolutions – s23(5) Local Government (Rating) Act 2002;

2.6.5 Dog control policy and practice report, s10A Dog Control Act 1996;

2.7 amend the Local Government Act 2002 and Local Government and Official Information and Meetings Act 1987 to empower the Secretary for Local Government to require specific accessible formats for types of documents that are made publicly available or filed;

**Effective local governance and representation**

2.8 amend the Local Government Act 2002 and the Local Government Official Information and Meetings Act 1987 to include a mandatory requirement for councils to publish public notices on their council’s website until any opportunity of review or appeal has lapsed;

2.9 amend clause 32(3) of Schedule 7 of the Local Government Act 2002 so that it aligns with the limits on the power to delegate under clause 32(1) of the same Act;

2.10 amend clause 22 of Schedule 7 of the Local Government Act 2002 on extraordinary meetings to clearly distinguish the different purposes for extraordinary meetings and limit the most urgent meetings to matters where a delay would be detrimental to the consideration of viable options;

2.11 amend section 233 of the Local Government Act 2002 to refer to clause 32 of Schedule 3 to correct a mismatched offence for advertising during a reorganisation referendum period;

2.12 amend section 4 of the Local Electoral Act 2001 to provide a mandate for local authorities to facilitate participation in local elections;
2.13 amend the Local Electoral Act 2001 to provide that a successful candidate in a by-election comes into office on the day after the day on which the official result of the election is declared by public notice;

3. note that the Local Government Regulatory Systems bill has a category 5 priority (to be referred to a select committee in 2016);

4. invite the Associate Minister of Local Government to issue drafting instructions to Parliamentary Counsel Office in relation to agreed amendments in recommendation 2 for inclusion in a Local Government Regulatory Systems bill;

5. authorise preparation of and consultation on an exposure draft of the Bill with relevant stakeholders; and

6. authorise proactive release of this paper by the Department of Internal Affairs.

Authorised for lodgement

Hon Louise Upston

Authorised for lodgement
Annex 1: Minor and technical changes for efficient operations and administration

Standardise the meaning of "working day" (recommendation 2.1)

1. Within the local government regulatory system there is a notable difference between the three separate definitions of a ‘working day’. This definition is used to determine the maximum amount of time permitted for processes and the minimum amount of time for public notifications.

2. This variation means that the definition will be different depending on the legislation that is applicable to the statutory process. In practical terms varying definitions for a ‘working day’ means that council databases must operate different clocks to track different processes, increasing the complexity of its systems. This adds cost to the design and maintenance of integrated systems.

3. I propose to amend the Local Government Act 2002 to standardise the meaning of "working day" with the definition in the Local Government Act 1974 and the Local Government Official Information and Meetings Act 1987.

4. I also note that the Building Act 2004 and the Resource Management Act 1991 apply a definition that is different from the three definitions that I propose to change. That definition excludes a day in the period beginning on 20 December in any year and ending with the close of 10 January in the following year. I do not propose to address this issue, as the Building Act 2004 and the Resource Management Act 1991 fall outside the local government regulatory system. However, I note that these discrepancies have an administrative cost associated with them for the operations of local government.

Clarify the public notification requirements for the creation of a pedestrian mall (recommendation 2.2)

5. When the Local Government Act 2002 was amended in 2014, the requirement for a public notice was removed from the Special Consultative Procedure. The wording of section 336(9) of the Local Government Act 1974 still cross-references the public notice requirement and provides for additional information to be included when designating a road as a pedestrian mall. As the public notice is no longer required this makes the process for designating a road as a pedestrian mall uncertain.

6. I propose amending section 336 of the Local Government Act 1974 to require councils to consult in accordance with the principles of consultation under section 82 of the Local Government Act 2002. The principles in section 82 require the council to scale the consultation in proportion to the impact of the proposal and the parties potentially affected. The council will be required to make the proposal to create a pedestrian mall, the reasons for the proposal and an analysis of options, publicly available. They will also be required to invite those affected to have their views considered by the council.

7. This is a more targeted approach that is consistent with recent updates to the consultation requirements under the Local Government Act 2002. The updates give councils greater flexibility to determine the most appropriate and proportionate level of consultation.
Clarify the organisations permitted to certify Disability Assist Dogs (recommendation 2.3)

8. The definition in section 2 of the Dog Control Act 1996 includes the names of some, but not all, of the organisations that are authorised to certify dogs as Disability Assist Dogs. This creates uncertainty about which organisations are authorised to certify Disability Assist Dogs. There is no single legislative instrument which provides the names of all authorised organisations.

9. I propose to amend the Dog Control Act 1996 definition of Disability Assist Dog in section 2 to refer to a schedule to the Act and enable that schedule to be updated by way of Order in Council. The schedule will list the organisations that are currently authorised and will be updated as new organisations are authorised. This proposal is consistent with Article 20 (personal mobility) in the Convention on the Rights Persons with Disabilities – “to ensure personal mobility with the greatest possible independence for persons with disabilities”.

Clarify war veterans’ eligibility for rates rebates (recommendation 2.4)

10. Section 2 of the Rates Rebate Act 1973 excludes war widows’ pensions and war disablement pensions as general descriptions of a class of income that is not taken into account as income when determining eligibility for a rates rebate. These descriptions are archaic and not consistent with descriptions used in the Veterans’ Support Act 2014. This creates ambiguity about which pensions and allowances paid by Veterans’ Affairs should be included when determining a person’s eligibility for a rates rebate.

11. I propose to amend the Rates Rebate Act 1973 to clarify that all impairment compensation pensions and allowances paid by Veterans’ Affairs under the Veterans’ Support Act 2014, are not included as income when determining eligibility for a rates rebate. This proposal represents a codification of the existing practices and would not impact or change the number of people that are currently eligible for rates rebates.

Remove the requirement for a statement on rates limits in council financial strategies (recommendation 2.5)

12. The Local Government Act 2002 requires each local authority to include a financial strategy as part as of its long-term plan. Included in the strategy must be a statement that quantifies: rates limits, rate increase limits, and borrowing limits. Although statements on rate increase limits and borrowing limits are still relevant, a statement on rates limits is superfluous. The meaning of this required statement is confusing and unnecessary for the preparation and consultation of a draft long-term plan.

13. I propose to amend sections 93C and 101A of the Local Government Act 2002 to remove the requirement for a statement on the quantified limit on rates in a council’s long-term plan and consultation documents.
Reduce local government filing requirements and improve document accessibility
(recommendations 2.6 and 2.7)

14. Councils are required to file a significant number of documents with central agencies. Requirements to file these documents increase administrative and compliance burdens as well as procedural risks if not completed correctly. Where documents are not filed for the purpose of notification or where filing the document duplicates publicly available information, the benefits of requiring the document to be filed may be outweighed by the costs of doing so. In most circumstances, central agencies rely on the publicly available electronic versions of particular documents rather than the physically filed copies.

15. Additionally, the format in which documents are filed or made publicly available is largely uncontrolled. This can decrease the accessibility of the information for communities and central agencies and increase the administrative costs of using the information. Providing documents in accessible formats is consistent with Article 9 of the Convention on Rights of Persons with Disabilities to ensure disabled people have access, on an equal basis with others, to information and communication technologies.

16. Reducing the number of documents filed and controlling the format of documents will maximise the benefits for central agencies and local government.

17. I propose amendments to the following Acts to remove the requirement to file the following documents with the Secretary for Local Government, Auditor-General and the Parliamentary Library:

17.1 Council Long-Term Plan – s93(10)(b) Local Government Act 2002
   17.1.1 Filed with: Secretary for Local Government, Auditor-General and the Parliamentary Library

17.2 Annual Plan – s95(7)(b) Local Government Act 2002
   17.2.1 Filed with: Secretary for Local Government, Auditor-General and the Parliamentary Library

17.3 Annual Report and Summary – s98(6) Local Government Act 2002
   17.3.1 Filed with: Secretary for Local Government, Auditor-General and the Parliamentary Library

17.4 Rating resolutions – s23(5) Local Government (Rating) Act 2002
   17.4.1 Filed with: Secretary for Local Government

17.5 Dog control policy and practice report, s10A Dog Control Act 1996
   17.5.1 Filed with: Secretary for Local Government

18. I also propose to amend the Local Government Act 2002, Local Government Official Information and Meetings Act 1987 and the Dog Control Act 1996 to empower the Secretary for Local Government to require documents to be made publicly available or filed in a specified accessible format.
Annex 2: Minor and technical changes for effective local governance and representation

Require digital public notices (recommendation 2.8)

19. The current public notice definition mandates that public notices are included in newspapers. Councils can, but are not required to, publish a notice on a council’s website. It is now common practice that key information relating to council decisions will be searched for, and accessed from, council websites. Public notices are an important procedural element in many decision making processes for local government. The ability for members of the public to locate these notices is integral to the legitimacy and transparency of democratic decision making. This proposal takes a step towards publishing notices exclusively in a digital format in recognition of the potential decline of regular local newspapers.

20. I propose to amend the Local Government Act 2002 and the Local Government Official Information and Meetings Act 1987 to include a mandatory requirement for councils to publish public notices on their council’s website until any opportunity of review or appeal has lapsed.

Align delegation and sub-delegation powers (recommendation 2.9)

21. Clause 32 of Schedule 7 of the Local Government Act 2002 sets out that a local authority may delegate its responsibilities, duties or powers to a committee, community board, or member or officer of the local authority. These delegated powers may be sub-delegated to a subcommittee or person. By including the words “or person”, the power to sub-delegate is broader than the original power to delegate.

<table>
<thead>
<tr>
<th>Delegation (clause 32(1))</th>
<th>Sub-delegation (clause 32(3))</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unless expressly provided otherwise in this Act, or in any other Act, for the purposes of efficiency and effectiveness in the conduct of a local authority’s business, a local authority may delegate to a committee or other subordinate decision-making body, community board, or member or officer of the local authority any of its responsibilities, duties, or powers except—</td>
<td>A committee or other subordinate decision-making body, community board, or member or officer of the local authority may delegate any of its responsibilities, duties, or powers to a subcommittee or person, subject to any conditions, limitations, or prohibitions imposed by the local authority or by the committee or body or person that makes the original delegation.</td>
</tr>
</tbody>
</table>

22. This inconsistency between the delegation and sub-delegation powers is a drafting issue that was present in the Local Government Act 2002 when it was originally enacted. For local authorities who are aware of the issue, the limits of sub-delegation are uncertain.

23. I propose amending clause 32(3) of Schedule 7 of the Local Government Act 2002 so that it aligns with the limits on the power to delegate.
Clarify the meaning of extraordinary meetings (recommendation 2.10)

24. Extraordinary meetings reduce the minimum time required for public notices to be published, the call for the meeting to go out to members and notification of the date of the meeting. Reduced notification periods are justified when a matter for the council needs to be considered with some urgency. Under the Local Government Act 1974:

24.1 A special meeting was one where the matter needed to be considered with some urgency or was called by at least 1/3 of the councillors. It could not wait until the next scheduled meeting.

24.2 An emergency meeting was one which the content needed a decision in less than three days because it could not wait for a special meeting to be called. It could not be called by the councillors, only the Chief Executive or the Mayor.

25. The Local Government Act 1974 provisions relating to extraordinary meetings were merged into clause 22 Schedule 7 of the Local Government Act 2002. Combining the definitions has resulted in confusion about when an extraordinary meeting should be used. It created a possibility that extraordinary meetings could be misused to minimise the time required between calling, publicly notifying and holding a meeting.

26. I propose to amend clause 22 of Schedule 7 of the Local Government Act 2002 to clearly distinguish the different purposes for extraordinary meetings, and limit the most urgent meetings to matters where a delay would be detrimental to the consideration of viable options.

Correct a mismatched offence for advertising during reorganisation referendum period (recommendation 2.11)

27. Section 233 of the Local Government Act 2002 provides that it is an offence if advertising obligations, in relation to reorganisation proposals, are not met. Section 233 refers to clause 58 of Schedule 3. Clause 58 no longer exists and the current equivalent provision is clause 32. It is possible that if a prosecution was brought under the current wording, the cross-reference would be interpreted as referring to the correct section. If the error is not corrected there will remain an increased risk that future prosecutions will not be undertaken or could fail on this technicality.

28. I propose to amend section 233 of the Local Government Act 2002 to refer to clause 32 of Schedule 3 to correct the mismatched offence for advertising during a reorganisation referendum period.

Create a mandate to facilitate voter participation in local elections (recommendation 2.12)

29. Participation rates are continuing to decline across almost all member states of the Organisation for Economic Co-operation and Development (OECD). In 2013, voter turnout for local elections in New Zealand dropped to 41.4 per cent, which is a decrease of 8 per cent from 2010.

30. As voter turnout declines the effectiveness of representation decreases, because the elected members represent a decreasing number of potential voters. When certain groups are not voting, or less able to participate, their views are less likely to be expressed in candidacy. A number of potential causes of low voter turnout were identified by the Justice and Electoral Committee following the 2013 local elections.
31. I propose to clarify that councils are empowered to take action to improve voter participation by amending section 4 of the Local Electoral Act 2002 to provide a mandate, comparable to that in section 4C of the Electoral Act 1993, for local authorities to facilitate participation in local elections and improve voter turnout.

*Clarify the timing of taking office by a successful candidate following a by-election (recommendation 2.13)*

32. The Local Electoral Act 2001 was amended in 2013. That amendment sought to align the time that candidates in triennial elections came into office, whether they were elected unopposed or were successful in the election. Unfortunately, the amendment did not address the time that candidates in other elections (i.e. by-elections) came into office. The current provision for members filling extraordinary vacancies to come into office only applies to appointments, not by-elections.

33. I propose amending the Local Electoral Act 2001 to provide that a successful candidate in a by-election comes into office on the day after the day on which the official result of the election is declared by public notice under section 86 of the same Act.