Better Local Services?

SOLGM's Submission on the Local Government Act 2002 Amendment Bill (No. 2) 2016

SOLGM
New Zealand Society of
Local Government Managers

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Subsections 24(m) and 24(n)	**Scope of reorganisation** The scope of a reorganisation has been widened to incorporate transfers and the establishment of CCOs. As currently worded this places committee structures within councils as a matter that can be reorganised in its own right.	1. That the Commission **agree** to add the phrase "but only where this is necessary to give effect to other reorganisation under this section" to the proposed new subsections 24(m) and 24(n).
Clause 7(g)	**Community support for reorganisations** The test for demonstrable community support has been largely removed from the Bill. This test previously showed a minimum expectation for public support. This test has also helped the Commission conclude whether proposals for political amalgamation would succeed at a poll.	That the Committee: 2. **agree** that proposals for reorganisation initiatives should be required to show demonstrable community support 3. **agree** that the clause 7(g) be amended by deleting the phrase " of significant community opposition to" and replacing this with "that there will be demonstrable community support for …"
Clause 2, Schedule Three of the Principal Act	**Good Local Government** The promotion of 'good local government' has been referred to as a requirement for reorganisation. However, the nature of 'good local government' does not have a single clear legislative statement of what it actually constitutes.	That the Committee: 4. **agree** that term good local government be defined and added to clause 2, Schedule Three of the principal Act 5. **agree** that proposals for reorganisation initiatives should be required to show how they meet the test of good local government 6. **agree** that reorganisation investigations should be required to demonstrate how they promote good local government.

	Comment	Recommendations
Clause six, Schedule Three	**Investigations for reorganisation** Local authorities can provide insight into investigations. Under the principle that the Commission can initiate investigations of its own motion, local authorities do not have the right to comment on proposed matters to be investigated. The Commission does not need to discuss the proposed scope of the investigation with the affected local authorities.	That the Committee: 7. **agree** that the proposed new clause six, Schedule Three be amended to require the Commission to allow local authorities the ability to comment on the scope of any investigation upon notification and before making any decisions on the investigation process 8. **agree** that the Commission should recognise any relevant evidence that others hold (and not just the evidence the Commission holds).

	Comment	Recommendations
Subclause 23(1)(e), Schedule Three	**Public Engagement on Reorganisations** One of our most fundamental concerns with the Bill in its present form is that the community's rights to be engaged are not clearly spelt out. It is unclear what process the Commission would be expected to follow when consulting during a reorganisation. The Commission will be making decisions that will have a major impact, as a result public feedback may shape the Commission's conclusions.	That the Committee 9. **agree** that the Commission be required to consult during the reorganisation process using a process or processes in accordance with section 82 of the Local Government Act 10. **agree** that the proposed new subclause 23(1)(e), Schedule Three be amended by adding the words "local authority or to a council controlled organisation" after the word "another". This amendment would require polls for transfers of transport services, water services and RMA to CCOs (subject to the amendment in recommendation 11 below) 11. **agree** that the proposed new clause 23, Schedule Three be amended by adding a clause that reads *"Despite subclause 1(e) a reorganisation that has the support of all affected local authorities need not proceed to a poll*" or similar

	Comment	Recommendations
Clause four, Schedule Three of the principal Act	**Time limits on reorganisations** The Bill appears to propose repeal of the present clause four, Schedule Three of the principal Act. This clause prohibits what the Bill would refer to as reorganisation initiatives and investigation requests where a local authority has been the subject of a reorganisation and the scheme contains a time limit on new initiatives. Continual reorganisation can impact on organisational morale, retention of staff, community perception of the value of democracy etc.	That the Committee: 12. **agree** that clause four, Schedule Three of the principal Act be retained with amendments to provide for the wider scope of reorganisation. 13. **agree** that the proposed new clause seven, Schedule Three be amended by adding a new subclause (b) that would read "the time elapsed since the last investigation of the same, or substantially similar nature, and any relevant changes in circumstance in the intervening period".
Subclause 12(2), Schedule Three	**Transfer of assets and liabilities** It is unclear whether the Government intended that the water assets would transfer to the CCOs. A transfer of assets that is not undertaken with proper consideration of all the implications could place some local authorities at risk.	14. That the Committee **agree** that the proposed new subclause 12(2), Schedule Three be amended by adding the phrase, *"and the financial and service implications"*.

	Comment	Recommendations
Subsections 31A(2)(b), 31A(2)(c), 31A(3)	**Local Government Commission: Ministerial Expectations** We would expect that as a minimum the Minister would be required to consult, the Commission, the local government sector, through its representative organisation Local Government New Zealand and any other Minister who is likely to be interested in, or whose responsibilities might be affected by the Minister's proposed expectations, when considering priorities for investigations. We consider that ministerial powers should be used transparently.	That the Committee: 15. **agree** that the proposed new subsections 31A(2)(b) and subsections 31A(2)(c) be deleted 16. **agree** that the proposed new subsections 31A(3) be amended to require the Minister to consult the Commissions, the Local Government Association of New Zealand Incorporated[1], and any interested or affected Ministers 17. **agree** that the Commission be required to publish any statements of Ministerial expectations as part of its statement of intent.
Subsection 33(2A)	**Local Government Commission Membership** The proposed amendment allows for the appointment of up to two further Commissioners. However, there is no requirement on a Government to appoint or even consider people with a background in local governance, the management or delivery of local services or infrastructural management and delivery.	That the Committee: 18. **agree** that a new subsection 33(2A) be added to the Bill requiring that at least one member must have served as a member or Chief Executive of a local authority 19. **agree** that the proposed new subsections 33(2A) be amended to require the Minister to consult the Local Government Association of New Zealand Incorporated before making an appointment to the Local Government Commission.

[1] This is the legal name of the organisation currently trading as Local Government New Zealand, and is the name used elsewhere in legislation (such as the Rating Valuations Act 1998).

	Comment	Recommendations
Subsections 31H(4) and (5)	**Disputes resolved by the Local Government Commission** We note the importance of the proposed provisions that empower the Commission to resolve disputes where authorised in the Bill, and where one or more of the parties to the dispute refer the matter to the Commission. However, we have also noted that as currently worded regional councils may not recognised as a party in a dispute. Furthermore, there may be additional information created in the course of the local authority's supply of information during a dispute that may not be explicitly removed from the scope of the Official Information Act 1982.	That the Committee: 20. **agree** to extend protection under official information law to include information about a dispute that is supplied to the Commission and 21. **agree** that the proposed new subsections 31H(4) and (5) be amended by adding the words " or Chair of a Regional Council, …" after the word Mayor.
Section 56J	**Bylaws** The proposed section allows for the creation of a joint committee with responsibility to appoint and 'warrant' enforcement officers and commence enforcement actions, essentially overseeing bylaws. It is unclear to us whether the creation of a joint committee specifically to oversee bylaws is necessary.	22. That the Committee **agree** that the proposed new section 56J be removed from the Bill.

	Comment	Recommendations
Section 56C(2)	**CCO Accountability documents – Service Delivery Plans** We support the requirement that substantive CCOs prepare a service delivery plan. However, the wording of this section could be improved, particularly around "environmental factors."	23. That the committee **agree** that the proposed new section 56C(2) be deleted and replaced with the "the service delivery plan must set out: (i) the shareholders' objectives and how the organisation contributes to the achievement of these objective (ii) the intended levels of service (iii) programmes of capital expenditure and maintenance necessary to achieve the intended levels of service (iv) demographic, economic and other factors that give rise to the need for expenditure." 24. That the Committee **agree** that substantive CCOs be required to seek and consider shareholder comments while preparing a service delivery plan.
Section 56D(3)	**Infrastructure Strategies for CCOs** The proposed section requires that transport services and water services CCOs should have an infrastructure strategy in place, and notes that other substantive CCOs may be required to have a strategy. However, there is no requirement to seek and consider shareholders comments in preparing the strategy.	That the Committee: 25. **agree** that CCO infrastructure strategies after the transitional should be adopted as part of the CCO's service delivery plan 26. **agree** that the proposed new 56D(3) be amended by deleting the phrase "Subsections (3) and (4)" and replacing it with "Subsections (3), (4) and (6) …". 27. **agree** that substantive CCOs be required to seek and consider shareholder comments while preparing an infrastructure strategy.

	Comment	Recommendations
Section 56W(3)	**Shareholder Committees - Exemption** Under the proposed section regarding exemption local authorities do not need to form shareholder committees if "each" of the shareholding local authorities resolves to separately perform its duties as a shareholder. The intent of the word "each" may need to be clarified.	28. That the Committee **agree** to replace the term "each" with the term "all individually."
Section 56W(4)	**Shareholder Committees - Unanimity** The proposed section requires that in circumstances where shareholding local authorities resolve to exercise their shareholders duties individually then the obligations can only be resolved by unanimous agreement, the unanimous requirement may prove to become difficult for CCOs that may be large entities.	29. That the Committee **agree** to delete the term 'unanimous agreement' in section 56W(4) and replace with 'by resolution of two-thirds of the shareholding authorities'.
Section 41A(5)	**Shareholder Committee Membership** There may be a potential disconnect between the provisions for a joint shareholder committee under the proposed section 56W of the Bill and the present section 41A (which establishes that a Mayor is an ex-officio member of all council committees and subcommittees).	30. That the Committee **agree** that section 41A(5) be amended by adding the phrase "other than a joint shareholders committee established under section 56W of this Act".

	Comment	Recommendations
	Distribution of Surpluses to Shareholders Water services CCOs have been expressly prohibited from distributing a surplus to any of its shareholders under the Bill, however this rationale has not been applied to transport CCOs. Public concern about any charging for road use is likely to be of equal concern.	31. That the Committee **agree** to add a provision prohibiting transport services CCO from distributing a surplus to shareholders.
Section 31H	**Development Contributions Policies** Setting development contributions is an important policy choice for local authorities, subject to public consultation. We are unclear that an unelected board of a CCO should be able to simply "require" a local authority to amend its development contributions policy, and without a direct requirement to consult the affected local authorities. Additionally, the Bill requires the administering local authority to pay all development contributions to the CCO, less the reasonable cost of administering the policy. However, an administrative cost cannot be regarded in any way as a capital cost due to growth. The practical effect of this is that any attempt to recover an administrative cost through a development contribution would be ultra vires.	That the Committee 32. **agree** that substantive CCOs and their shareholding local authorities should agree on the contents of amendments to development contributions policies and 33. **agree** that disputes between substantive CCOs and their shareholding local authorities regarding the content of any proposed amendments should be resolved by the Local Government Commission under the proposed new section 31H 34. **agree** that subpart five of part eight of the principal Act be reviewed to ensure that recovery of the costs of administering the policy can be legitimately recovered via development contributions 35. **agree** that subpart five of part eight of the principal Act be reviewed to ensure that the provisions now reflect what has become a three way relationship between the developer, the local authority and the CCO.

	Comment	Recommendations
Section YA 1 of Income Tax Act 2007	**Tax Status of Multiply Owned or Substantive CCOs** Any reorganisation that results in local authority core activities being transferred to a CCO mean that these activities will become subject to income tax at the CCO level, as will any income received by a local authority from a CCO. It should be noted that core activities do not compete with the private sector and should be treated as if they were provided by a local authority.	36. That the Select Committee **agree** that CCOs that are wholly owned by local authorities, provide core functions, and do not compete or are unlikely to compete with private sector enterprises should be subject to the same tax treatment as a local authority.
Section YA 1 of Income Tax Act 2007	**Taxation of Water Services Council-Controlled Organisation** Due to the proposed prohibition on water services council-controlled organisations being able to pay a dividend or distribute any surplus to any owner or shareholder then any profits will be subject to income tax wholly within the water services council-controlled organisation.	37. That the Select Committee **agree** that water services CCOs should be exempt from income tax. This could be achieved by defining a water services CCO as a "local authority" in section YA1 of the ITA 2007 38. That the Select Committee **confirm** that the prohibition on water services CCOs distributing surpluses is akin to not operating with the purpose of making a profit. 39. That the Select Committee **clarify** the ambit of clause 56H(a) including whether this extends to the ability of a water-services CCO to provide discounts or rebates to any owner or shareholder; make subvention payments to shareholders (in the event they are not income tax exempt) or accept/receive tax loss offsets from shareholders (in the event they are not income tax exempt).

	Comment	Recommendations
Section YA 1 of Income Tax Act 2007	**Taxation of a Transport Services Council-Controlled Organisation** It appears that a transport services council-controlled organisation will be subject to income tax if it is a company or an "entity" that has a profit purpose (i.e. it is a CCTO). We note that this differs to the tax treatment of Auckland Transport which is defined as a local authority for the purposes of the ITA 2007.	40. That the Select Committee **agree** that transport services CCOs should be exempt from income tax. This could be achieved by defining a transport services CCO as a "local authority" in section YA1 of the ITA 2007.
Schedule Three of the Bill and Schedule Nine of the Principle Act	**Structure of Local Government Related Tax Rules** The rules in Schedule Three of the Bill will apply when there is a reorganisation under proposed section 24 of LGA 2002. However, we note that pre-existing tax rules applicable to the transfers of undertakings to CCOs already exist within Schedule Nine of the Principal Act.	41. That the Select Committee **agree** that officials be directed to review the Schedule Three provisions against Schedule Nine of the principal Act.
Clause 55 (1) of Schedule 3	**Schedule Three – General Tax Rules - General treatment** Breadth of general rules proposed under schedule 3 could extend beyond what is intended.	42. That the Select Committee **agree** that the ambit of the General Rules be restricted to matters associated with assets, liabilities or voting/market interests referred to in proposed clause 55 (1) of Schedule 3.

	Comment	Recommendations
Clause 57	**Clause 57 Income and Expenditure** The proposed clause 57 is ambiguous as it seeks to specify that income and expenditure incurred by a transferring entity before the date of transfer does not become that of the receiving entity simply because of the transfer of assets and liabilities. Additionally, *expenditure* on financial arrangements, depreciable property, trading stock etc. are dealt with elsewhere.	43. That the Select Committee **agree** that all references to "expenditure" in Clause 57 be replaced by the term "expenses."
Clause 58(2)(a), Section EE 58(1) of Income Tax Act 2007	**Clause 58 Transfer Values** Proposed clause 58(2)(a) specifies that where such depreciable property is transferred to a receiving entity and will not be used for deriving exempt income then the transfer occurs on the transfer date at *accounting carrying value* on that date. We submit that the transfer value in this circumstance should be the *market value*. It is our understanding that this would be consistent with section EE 58(1) of Income Tax Act 2007.	44. That the Select Committee **agree** to seek further advice as to whether transfer values for the purposes of clause 58 should be market values.
Clause 59	**Clause 59 – Continuity** It is possible that only a part of the operations of a transferring entity is transferred to a transferring entity. In this instance, it is possible that only a portion of a tax loss, loss balance or imputation credit balance should be available to the receiving entity.	45. We submit that the Committee **consider** whether an apportionment of losses and/or imputation credits may be required and determine a mechanism to achieve this.

	Comment	Recommendations
Clause 60(2)	**Clause 60 - Goods and services tax** The intent of clause 60(2) is unclear and at the very least requires a minor amendment.	46. That the Select Committee **agree** that Clause 60 should be clarified. In the event that the Committee determines that no such clarification is required, it should be **amended** so as to insert "output" prior to "tax payable".
Clause 11, Schedule Three	**Tax implications and reorganisation plans** The proposed new clause 11, Schedule Three does not specifically place the Commission under a duty to consider other implications, including tax costs to ratepayers.	47. That the Select Committee **agree** that that clause 11, Schedule Three be amended to ensure that the Commission is required to ensure that the tax implications for ratepayers are identified in reorganisation plans, and that the reorganisation plans take steps to minimise the impact on ratepayers.
Section 24	**Joint governance arrangements** Under section 6 of LGA 2002 a committee or joint committee of a council is specifically excluded from the definition of an "entity". The ramification of this is that such a committee cannot fall within the definition of a council-controlled organisation for tax purposes. However an "entity" does include "unions of interest" and "cooperation" or "similar arrangements". Previous tax concerns have existed around the meaning and boundaries of these terms.	48. That the Select Committee **agree** that the proposed schedule there be amended to clarify that committees and joint committees established under a section 24 reorganisation be treated the same as local authorities for income tax purposes.

	Comment	Recommendations
Kiwisaver Act 2006 (new subpart 4), Part Four of Schedule Three	**Kiwisaver** There is a possible discrepancy in the treatment of employees moving to CCOs and Kiwisaver.	49. That the Select Committee **consider** whether clauses affecting the employment status of employees and the application of the Kiwisaver Act 2006 should be included within the new subpart 4, of Part Four of Schedule Three. We understand provisions similar to the present clauses 49 and 50 of Schedule Three of the principal Act would be useful.
Paragraph 39 of the associated Cabinet paper	**Rates Rebates Scheme** Paragraph 39 of the associated Cabinet paper appears to contemplate change to the rates rebate scheme to ensure water and wastewater charges fall within the ambit of the scheme. We can find no such amendment in the legislation and suggest that one is needed.	50. That the Committee **agree** that water and wastewater charges levied by CCO should be included within the ambit of the Rates Rebate Scheme and amend the Bill accordingly

Section 261	**Additional Performance Measures** We have previously expressed concerns that the performance measures that are currently required under the authority of sections 259 and 261A are focus only on network infrastructure and therefore do not reflect the total ambit of local authority activity. The existing measures have required guidance and supporting material, with local authorities considering how best to collect the data. Furthermore, consistent benchmarking requires quality data, with quality data infrastructure provided by local authorities. However, the proposed sections do not consider implementation guidance or whether there should be a lead time for the introduction of new regulations.	That the Committee 51. **agree** that s261B of the principal Act be amended to require the Secretary to allow at least 18 months lead time on any new regulations made under s261 52. **agree** to amend the principal Act by adding a new section that requires the Secretary to make implementation guidance with six months of making new regulations under s261B 53. **agree** to amend references to disallowable instruments in clause 33 by removing the word "not" from line 31 and replacing the words "does not have to" in line 32 with the word "must".
Sections 259 and 261 of the principal Act	**Reviews of Effectiveness** While we agree that the Minister should consider the effectiveness of local authorities' performance, we have expressed concerns about the relevance and usefulness of some of the current mandatory performance measures that sit within the present regime.	54. That the Committee **agree** to amend the principal Act by adding a requirement to review the effectiveness of existing regulations made under sections 259 and 261 of the principal Act before making new regulations.
Clause 32, section 259(d)(f)	**Disclosure of Corporate Accountability Information** Clause 31 of the Bill prescribes the corporate accountability information that local authorities must disclose in any or all of their accountability documents, as presently drafted this power is excessively vague.	55. That the Committee **agree** to amend clause 32of the Bill by either deleting the proposed new section 259(d)(f) or deleting the term 'corporate accountability information' and replacing it with a list of the required information.

Section 259(4) of the principal Act	**Fiscal Benchmarks for CCOs** The Bill provides the Minister with the power to establish parameters or benchmarks for assessing the financial management within CCOs. Our concern is that poorly set parameters or benchmarks could generate frequent 'false positives' (i.e. a result that falsely indicates an issue) or (worse) 'false negatives (i.e. a result that indicates a false 'green light'). These risks could be mitigated by requiring consultation with the experts in financial management in local authorities and their associated entities.	56. That the Committee **amend** section 259(4) of the principal Act by deleting all words after "consultation" and replacing with "with: (i) the New Zealand Local Government Association Incorporated; and (ii) the Society of Local Government Managers; and (iii) the Auditor-General."

Introduction

The New Zealand Society of Local Government Managers (SOLGM) thanks the Local Government and Environment Committee (the Committee) for the opportunity to submit on the Local Government Act 2002 Amendment Bill ('the Bill').

SOLGM generally supports the aspects of this Bill that provide a wider range of options to enhance the delivery of local services, and enhances the ability of local authorities and their communities to initiate their own solutions.

As we have worked through the Bill introduced into Parliament we have become concerned at the extent of the powers this Bill extends to an unelected Local Government Commission, and to the Minister. The Bill also widens the power to regulate the content and presentation of the sector's accountability documents to a point that impinges on the accountability relationship between local government and its community.

Our submission considers these two issues, and offers what we consider are constructive solutions that enhance the ability of communities to determine their own arrangements while maintaining local accountability.

We are also concerned that this Bill and the Cabinet paper that preceded it each show signs of haste in construction, and have been prepared with little consultation with the sector. There are a number of technical and practical issues with this Bill – not least that in the focus on accountability arrangements for CCOs, little apparent thought has been given to the impact on accountability arrangements for CCOs. We have devoted a great deal of effort to developing solutions that will make the Bill more workable to implement, and in some cases correct issues of a technical or practical nature.

Who are we?

SOLGM is a professional society of over 625 local government Chief Executives, senior managers, and council staff with significant policy or operational responsibilities.[2] We are an apolitical organisation. Our contribution lies in our wealth of knowledge of the local government sector and of the technical, practical and managerial implications of legislation.

Our vision is:

> *Professional local government management, leading staff and enabling communities to shape their future.*

[2] Numbers as of 1 July 2016.

Our primary role is to help local authorities perform their roles and responsibilities as effectively and efficiently as possible. We have an interest in all aspects of the management of local authorities from the provision of advice to elected members, to the planning and delivery of services, to the less glamorous but equally important supporting activities such as electoral management and the collection of rates.

Although we work closely and constructively with Local Government New Zealand, we are an independent body with a very different role. We have read, and generally agree with the submission that they have put forward on this Bill.

The Policy Context

"The Bill will enable two or more councils to create council-controlled organisations (CCOs). Multiply-owned CCOs can have greater size, scale and capacity than can be achieved by individual councils," Mr Lotu-Iiga says.

For the first time, councils will be able to lead reorganisation proposals in consultation with their communities and neighbouring councils.

"The Bill also provides for the Local Government Commission to have enhanced powers to work with councils and government to support reorganisation proposals."

Press release from Hon Peseta Sam Lotu-Iiga[3]

The stated intent of the Bill is laudable, but has been lost

The Minister's statements that open this section point to a reform package that is enabling, that is council led, with the Commission in a supporting role. The end objective to provide councils with more flexibility to determine what service arrangements suit them best including better enabling transfers of functions and the establishment of CCOs.

Amendments to the Act during 2012 established that the purpose of local government is to "provide good quality local infrastructure, local public services and local regulation, in a manner most cost-effective for households and business."[4] Good quality is defined as a service that is effective, efficient and appropriate to the present and future needs of the community.

SOLGM therefore takes a pragmatic approach to the delivery of services. We support the rights of local communities to determine what institutional arrangements work best in local circumstances,

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3 Hon Peseta Sam Lotu-Iiga, *More Local Body Collaboration for Councils*, press release of 15 June 2016 downloaded from https://www.beehive.govt.nz/release/more-local-body-collaboration-councils-0, data retrieved on 19 July 2016.

4 Section 10, Local Government Act 2002.

SOLGM would support legislation that removes the legal and practical barriers to the acquisition of scale **and** better empowers the sharing of capability across the sector.

However the Bill takes quite a different approach from that signalled in the above statements. We would agree that the Bill does better enable councils to create CCOs and does empower council/community led reorganisation.

We would also agree that the Commission *could* operate merely as a *support* for councils through the process. However, the Commission's role goes some way beyond being a supportive enabler of change. In fact, the Commission has the powers to impose change with limited recourse to the community. We provide an in-depth analysis within this submission. However some of the examples of this include:

- Ministerial authority to direct the Commission as to what proposals to focus on is extremely broad, As the Bill stands, the Minister could direct the Commission to pursue proposals of a certain type, or across a certain service or in a particular area (or alternatively avoid pursuing proposals in some areas). This has the potential to inject politics into a body that has historically operated at arms-length from politics.
- The Commission may, on its own motion, initiate investigations (the first step in the reorganisation process) without discussing with the affected local authorities. It need only notify the affected local authorities.
- The Commission may establish multiply owned CCOs without the community having the chance to call for a poll (as is the case with other types of reorganisation) and with the Commission getting to determine what consultation process it follows (if any).

We submit that this Bill is a very different entity from that signalled in the Minister's public statements. Rather than being grounded in a philosophy that local communities are best placed to identify what works best for them, the Bill's underpinning philosophy appears to be that between three and five unelected officials are better placed to make decisions.

Local government is accountable to local communities for quality service

Our system of local government is based on accountability to local communities. The contract between a local authority and its community involves the delivery of a 'package' of levels of service in return for taxes and charges.

Performance information from publicly available sources shows that local authorities are generally delivering high standards of service to their communities. For example:

- the vast majority of councils met their financial benchmarks (71% had a balanced budget, 71% met the essential services benchmark and 97% met debt servicing requirements)
- most councils (52 out of 61) delivered between 90 to 100 percent of building consents within the statutory time frames

- similarly, the overwhelming majority of councils (63 out of 68) delivered between 90 to 100 percent of resource consents within the statutory timeframes
- 94 percent of councils had a road condition index of 95 or greater (62 out of 66 councils), that is to say that roads are being maintained to acceptable standards
- requests for Ombudsman's intervention involving local authorities account for a small percentage of the total number of requests received by the Ombudsman. There were only 7 instances where the Ombudsman sustained a complaint involving a local authority.

The cost of good quality service is increasing and will do regardless of which agencies deliver the services

Local government is frequently criticised *for the level of rates increases* – in particular that rates are increasing "faster than the rate of inflation". Although this statement is correct, it ignores that the cost drivers for a local authority are quite different from those that a household faces. Simply put, using household inflation to measure local authority costs is wrong.

Local authority costs are driven by the costs of providing infrastructure – be it roads, water, or community infrastructure. By way of illustration, in the period between June 2005 and June 2015 the Consumers Price Index (CPI) has increased 25 percent, the Producers Price Index (Construction – Outputs) has increased 44 percent.[5] Both measures are developed by an organisation that is independent of central and local government direction and can therefore be regarded as objective.

Each year BERL compile a set of forecast movements in the prices of the goods and services local authorities consume, using the same model BERL uses for its general economic forecasts. This local authority cost index is forecast to increase by around 29 percent over the coming years.[6]

Increases in the cost of infrastructure and increases in rates cannot be logically separated. Yet we are aware of only one substantial (but dated) piece of research that assessed and evaluated the drivers of cost increases, and that was limited to roading.[7] That report noted that road construction input costs had increased 30 to 40 percent in the preceding five years, with the author of the report further noting both that the increase was unavoidable and that this trend was mirrored in other countries.

Movements in construction prices are largely beyond a local authorities control – noting that all but the most minor capital work, and much of the maintenance work is 'market-tested' i.e. put to

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[5] The Local Government Act refers to this index as a measure of movements in construction prices. The PPI index we consider most closely approximates movements in infrastructure costs – that for Heavy and Civil Construction increased 51 percent.

[6] BERL 2015, *Forecasts of Price Level Change Adjustors – 2016 Update*. These are not forecast rates increases or expenditure increases, these are forecasts of the key producers cost and labour cost indices produced by Statistics New Zealand.

[7] Ministerial Advisory Group (2006), *Ministerial Advisory Group on Roading Costs – Final Report*.

competitive tender. The only real response available in these circumstances is to reduce the amount that is constructed, and this is not available in an environment where increases to service standards and demands for additional services on local government, often as a result of a policy direction from central government.

Sharing capability is a lot more prevalent than is commonly recognised

Local authorities do not compete with each other (in the sense that a private sector organisation would). One of the strengths of the local government sector is its ability to share capability. This takes many forms, ranging from something as informal as Hastings District (among others) assisting Christchurch City Council to clear the backlog of resource consents that existed in 2013, to more formal arrangements such as the establishment of Council Controlled Organisations (CCOs).

At the end of 2015 SOLGM undertook a short survey to determine how common shared capability arrangements were in the sector. The survey was done at short notice in December, but 35 councils still responded. All were involved in at least one such arrangement, with 80 percent stating they were involved in six or more. Shared capability arrangements also appear across most areas of local authority activity, not just in the network infrastructure. A summary of the results can be found in Appendix A.

The following case study highlights local government's ability to share, and to innovate for successful outcomes.

Case Study 1: A Successful Shared Initiative - Project Helix

Selwyn District has been New Zealand's fastest growing district for the past six years, and is a major player in the Canterbury rebuild. To ensure Council coped with sustained high levels of building activity it needed a better tool for managing demand and delivering service expectations.

Selwyn District Council in partnership with Alpha Group has developed and implemented an end-to-end, web-based building consent system (AlphaOne) to support its objectives of promoting excellence in service delivery and providing community and industry leadership as a territorial authority.

In an environment where central government is looking at national building consent systems, Selwyn and Alpha designed the product to address aspects such as shared services, faster consenting processes to stimulate the economy, and more efficient interactions with community and businesses. The results to date demonstrate a commitment to local government principles of territorial authorities working together to manage workloads, share resources and reduce compliance costs.

Project Helix was the winner of the Supreme Award at the 2015 McGredy Winder SOLGM Local Government Excellence Awards ® (as well as the Transforming Service Delivery category). At the time of writing this submission six councils have purchased the tool. To further demonstrate that innovation is a strong point in local government, Kaipara District Council's adoption of AlphaOne received a highly commended citation in the same category.

Recent legislative changes will further encourage sharing capability

Changes made to the Local Government Act during 2014 will serve as a further spur to local authorities to explore options for sharing capability. The new section 17A of the Act requires local authorities to periodically assess the cost-effectiveness of the arrangements for funding, governance and delivery of those services, together with a list of options that must be considered.

Many of these options in these service delivery reviews involve delivery by some combination of local authorities (such as a council owned company or joint venture). SOLGM guidance strongly recommends that local authorities undertake these reviews as a group – for example it would not be an efficient use of resources if each of the 10 territorial councils in a region each did a separate review of the same services.

The case study below shows just a sample of arrangements for shared capability that exist amongst the four councils on the West Coast, together with their targets for review during the section 17A process.

Case Study 2: A Commitment to Regional Efficiency – The West Coast Memorandum of Understanding

The three West Coast territorial authorities and the West Coast Regional Council recently agreed to a unified approach to generate greater efficiencies in service delivery across the region. Guided by what is best for the community as a whole, the four councils agreed to a Memorandum of Understanding.

Over time the four councils have worked collaboratively on more than two dozen projects or approaches. Some of the projects of interest include:

- a recent restructure of civil defence staff so they are now joined up and delivering on regional priorities through a new organisation (Civil Defence West Coast)
- a very new project to jointly deliver economic development at regional level
- joint procurement of insurance has resulted in substantial savings
- adoption of a Regional Transport Plan focussed regional effort on improving a key strategic route and a key one-lane bridge replacement
- Westland, Buller and Grey District Councils have joined up their building permit services (using Selwyn's Alpha One technology)
- joined up library services and approximately twenty other initiatives.

The four councils may consider the following during the section 17A process:

- a shared RMA planning, consenting and compliance monitoring team for the region
- a regional advocacy and policy development advice team
- Asset Management Plan and corporate (Long Term) planning as a team
- joint back office services (payroll, valuation & rates collection, accounting services)
- common IT support services
- a shared Communications officer and sharing of community engagement expertise
- a shared Regional Archive
- common HR and legal services offices
- a road maintenance centre of excellence
- a solid waste management centre of excellence
- a water supply centre of excellence and
- a wastewater treatment centre of excellence.

The acquisition of scale generates benefits but these are not uniform

One of the characteristics of much of the network and community infrastructure is that there are a number of small scale schemes and assets that are geographically dispersed. For example, Tasman District Council has no fewer than 15 water schemes and 12 wastewater schemes.

Cost structures are influenced not just by how many people live in a local authority, but also by how spread out they are. The 2013 Report of the Local Government Infrastructure Expert Group noted that:

> *Greater scale requires a larger and more complex bureaucracy and the centralisation of services can lead to a loss of local knowledge, expertise and reduced community engagement. In addition, not all services provided by local government may benefit from economies of scale, or may benefit only up to a point before diseconomies of scale emerge i.e. the per capita cost of a service stops declining and begins to increase.*[8]

and

> *Having reviewed international empirical evidence, it is clear that there is no universally recognised optimal population size for local authorities that will maximise economies of both scope and scale over the full range of services. It is very much a "horses for courses" situation. Some services are more efficiently provided locally, others regionally, depending on the particular activity.*[9]

Claims that amalgamation of services will automatically generate economies of scale should be treated with caution. Economies of scale may not be present in every case.

There is, as yet, relatively little evidence on the impact that the acquisition of scale has had in the New Zealand context. It seems to us that the establishment of the so-called substantive CCOs in the Auckland Governance reforms have been the prototypes for the water and transport services CCOs in the Bill. An evaluation of the performance of these organisations would be expected.

That is not to say that there are not advantages in agglomerating services. One available to owners of network infrastructure is the ability to "network price". That is to say, set up a funding system where the bigger or more mature parts of the network cross subsidise the new capital works needed in another, usually smaller, part of the district. There was an observable move towards network

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8 Local Government Infrastructure Expert Group, *Report of the Local Government Infrastructure Expert Group*, page 124.

9 Local Government Infrastructure Expert Group, *Report of the Local Government Infrastructure Expert Group*, page 127.

pricing in the 2012 LTPs, and still more local authorities consulted their communities on the issue during 2015.

The other potential benefit is the generation of strategic capacity. It can be difficult to attract suitably skilled and experienced engineers and asset managers to local government as a sector, particularly for rural and provincial local authorities. Agglomerating brings groups together which creates additional learning and sharing of expertise – and is the underpinning of the regional centre of excellence models.

There are some less positive aspects that can arise from the acquisition of scale, particularly where scale is achieved by setting up functional entities. The Bill provides for 'off the shelf' models for transport, roads and water services, and also appears to contemplate that some Resource Management Act functions could be fitted into a similar model. There is invariably some loss of integrated, co-ordinated planning and some replacement with functional siloes. The one report looking at the impact that the creation of Auckland's substantive CCOs has had on services and costs in Auckland noted that

> *There is some concern that the restructuring of Auckland's governance has removed geographic siloes, creating instead – with the CCO model – functional services where assets and services operate independently from the rest of the council structure. This is particularly the case with Auckland Transport and Ports of Auckland Limited, which are further removed from council oversight than other CCOs, and whose scale and scope of operations are vital to the on-going development of Auckland. That said the CCOs model has meant that the council has been able to draw on commercial and professional expertise in managing these assets and delivering crucial regional services, and the CCOs have been able to focus on their core mission shielded from daily political concerns.*[10]

This is not an academic consideration. Entities that operate in functional siloes and, for example, require multiple transaction points to connect to infrastructure networks, do not encourage the rapid building of affordable houses.

Change of the nature signalled in this Bill will be considerable. We submit that change of this nature should be staged. It should begin by identifying two or three areas where the commitment to change is demonstrable and piloting a new CCO model with an evaluation after a couple of years. We agree that infrastructure is a key part of New Zealand's economic performance, and that it is important to make evidence-based decisions and not rely on theory.

[1010] Shirley et al (2016), *The Governance of Auckland, Five Years On'* page 9.

The consultation process for this Bill was flawed

SOLGM would like to express concern over the nature of consultation with the local government sector, and the manner in which this Bill has been developed. The Disclosure Statement that accompanies this Bill provides Treasury's assessment that the Bill only "**partially meets** the [Government's set] quality assurance criteria" and further notes that:[11]

> *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.*[12]

SOLGM would like to highlight the importance of working with stakeholders in the development of legislation to ensure that issues of the technical nature are addressed early within the process. Our organisation represents highly knowledgeable senior management, Chief Executives and council staff throughout the nation. Our expertise could have helped aid and inform the preparation of this Bill.

SOLGM was **not** consulted in the preparation of the Better Local Services package – we became aware of the content of the announcements an hour before the general public. SOLGM has been consulted in the development of the last three Local Government Bills (those in 2010, 2012 and 2014), including sighting legislation in draft. SOLGM was not shown this legislation in draft. We understand that Local Government New Zealand likewise did not see the draft legislation, and became aware that this Bill was in the public domain only when contacted by a policy advisor to one of the MPs that sits on the crossbenches. Officials did not even see fit to advise us of the introduction 'after the fact'.

We leave it to the Committee to judge whether this represents a best practice approach to the development of legislation (or even good practice). We consider that many of the technical and practical issues we raise could have been resolved before introduction of the Bill. In short, officials could have saved a great deal of the Committee's time (and their own).

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11 Department of Internal Affairs (2016), Departmental Disclosure Statement, page 5

12 Department of Internal Affairs (2016), page 5.

Reorganisations

The Bill makes a large number of substantive changes to the provisions that govern reorganisations including changing the purpose of reorganisation, the types of reorganisation that can be made, and the processes through which the change is made. In preparing this submission we have worked through the provisions at a micro level and recommend a number of amendments.

Scope

We note that the scope of a reorganisation has been widened to incorporate transfers and the establishment of CCOs. The proposed new subsections 24 (m) and (n) provide the Commission with the power to establish Committees and Joint Committees and delegate powers to these bodies. We can easily understand why the Commission might need a power to establish these as part of giving effect to some types of reorganisation, for example a joint bylaws committee for a water CCO. As worded it seems to us that this provision places committee structures within councils as a matter that can be reorganised in its own right, for example by requiring a council with a Finance Committee and a Planning Committee to combine the two together.

If this is the case then it appears to be a very significant intrusion into the internal governance of local authorities with no apparent rationale. This appears to us to have been a drafting error.

Recommendation

1. **That the Committee agree to add the phrase "but only where this is necessary to give effect to other reorganisation under this section" to the proposed new subsections 24(m) and 24(n).**

Community Support

Clause eight, schedule three of the principal Act currently requires that any reorganisation proposal must have demonstrable community support, and that this is one of two fundamental tests that a reorganisation currently has to meet. As it stands, the Bill would largely remove this test from the Act.

Under this Bill, a reorganisation initiative may, but does not have to include information that demonstrates the initiative has community support. As far as we can determine, the Commission is not empowered to decline a reorganisation that is missing this information.

As imperfect a test as demonstrable community support was, it at least established a minimum expectation and acted as a means of weeding out proposals that were unlikely to have public support. This test helped the Commission conclude that there were no proposals for political amalgamation that would succeed at a poll.

These reforms were predicated on a commitment that they would give local communities *"greater value for money in their service delivery arrangements without communities losing voice and choice"*.[13] An initiative that does not start by showing it has demonstrable community support can hardly be said to protect community voice and choice.

We submit that the Bill must be amended to ensure that initiatives have demonstrable community support. In our view this should occur in two places:

- as one of the mandatory contents of a reorganisation initiative or investigation requests (this might be an additional (e) to the proposed new clause four of Schedule Three and reads "information that shows that the reorganisation initiative has demonstrable community support"
- as one of the steps in a reorganisation investigation (the wording of the present clause 7(g)) referring to significant community opposition which, in our view, is not a sufficient standard of proof. There should be a positive consensus for change. This should be amended to read *"the likelihood that there will be demonstrable community support for…"*

[13] Minister of Local Government (2016), Local *Government – Better Local Services Reforms*, paper to the Cabinet Economic Growth and Infrastructure Committee, page 3.

Recommendations

That the Committee:

2. **agree that proposals for reorganisation initiatives should be required to show demonstrable community support**
3. **agree that the clause 7(g) be amended by deleting the phrase "of significant community opposition to" and replacing this with "that there will be demonstrable community support for …"**

Good Local Government

There is a second test that reorganisation proposals must meet under current legislation. Clause 12 of the Third Schedule to the principal Act requires that reorganisations meet the so-called 'good local government test', which is specified at length.

The bottom line that reorganisations should promote good (dare we say better) local government lives in the Bill. The purpose of reorganisation (as amended in clause 8 of the Bill) refers to "*the (promotion) of good local government …"* A reorganisation plan has to state how it will promote good local government. And we agree that many of the key elements of the present test of good local government have been incorporated in the Bill.

We submit however, that the fundamental, emblematic nature of 'good local government' merits a single clear legislative statement of what the term constitutes. This should be incorporated in the interpretation section of the Third Schedule (i.e. clause two, Schedule Three).

Under the principal Act as it stands, all reorganisation proposals provide description of the potential improvements that would result from the proposed changes and how they would promote good local government.[14] The Bill makes no such requirement beyond "an explanation of the outcome that the proposed changes are seeking to achieve." We submit that having to demonstrate consideration of a test of good local government is a check on proposals that are being made for frivolous or non-substantive grounds. We submit that such a test should be inserted into clause four, Schedule Three.

[14] Clause 5(1) e, Schedule Three, Local Government Act 2002.

Recommendations

That the Committee:

4. **agree that term good local government be defined and added to clause 2, Schedule Three of the principal Act**
5. **agree that proposals for reorganisation initiatives should be required to show how they meet the test of good local government**
6. **agree that reorganisation investigations should be required to demonstrate how they promote good local government.**

Investigations

The Commission can initiate investigations of its own motion.

We support this in principle but note that the Commission does not need to discuss the proposed scope of the investigation with the affected local authorities. The proposed new clause six, Schedule Three appears to require the Commission only to notify the affected local authorities.

We submit that natural justice requires that the notification to the local authority come with the right to comment on the proposed matters to be investigated, and provide an indication of any information that the local authority holds that may be relevant. Each will better enable the Commission as it develops the process document. The latter will also be a relevant principle under the proposed new subclause 8(3)(c), Schedule Three.

On a purely technical note, the term 'process document' that is used in the proposed new subclause 8(2) of this Schedule is a term that does not occur anywhere else in this Bill. We suggest that this term should be amended to read "the written record made under (1) above" (or similar).

Recommendations

That the Committee:

7. **agree that the proposed new clause six, Schedule Three be amended to require the Commission to allow local authorities the ability to comment on the scope of any investigation upon notification and before making any decisions on the investigation process**
8. **agree that the Commission should recognise any relevant evidence that others hold (and not just the evidence the Commission holds).**

Public Engagement on Reorganisations

One of our most fundamental concerns with the Bill in its present form is that the community's rights to be engaged are not clearly spelt out. Local communities do care about the services they receive (as any local authority who has ever tried to close or transfer a small water scheme, or change library opening hours will tell you). They are especially sensitive to a loss of responsiveness to local concerns, something that no amount of accountability documents will overcome.

It is relatively clear that the Commission is expected to consult at some point during the process. The proposed new clause eight of Schedule Three refers to the key stakeholders and the opportunity they will be given to engage with the plan, and how and when members of the public will be consulted.[15] However it is unclear what process the Commission would be expected to follow when consulting. The Commission will be making decisions that will have a major impact, as a result public feedback may shape the Commission's conclusions.

The consultation requirements in the current Act appear to be modelled on the special consultative procedure that local authorities use for major decisions. This may be appropriate for the smaller range of more significant reorganisation options that are available to the Commission. More formal processes may not be as appropriate to some of the less impactful reorganisations, such as a minor transfer.

We submit that there is another option available. Section 82 of the principal Act sets out a series of principles of consultation, these include principles such as:

- *that persons who will or may be affected by, or have an interest in, the decision or matter should be encouraged by the local authority to present their views to the local authority*

[15] It is interesting to note that the drafters of this Bill did not see the public as a key stakeholder.

- *that persons who are invited or encouraged to present their views to the local authority should be given clear information by the local authority concerning the purpose of the consultation and the scope of the decisions to be taken following the consideration of views presented*
- *that persons who wish to have their views on the decision or matter considered by the local authority should be provided by the local authority with a reasonable opportunity to present those views to the local authority in a manner and format that is appropriate to the preferences and needs of those persons.*[16]

Most local authority decisions made under the Local Government Act now follow consultation in accordance with the principles of section 82. This test allows local authorities the flexibility to develop processes that are proportional to the decision and the time and circumstances in which they are made. We submit that placing the Commission under a duty to consult in this way would achieve a similar result.

SOLGM notes the amendment of the poll provisions to make the conduct of polls mandatory in cases where the Commission is proposing changes to political structures; to make a major transfer of water, transport or RMA functions between local authorities. These seem to (correctly) reflect either:

- a practical realisation that changes to political structures would almost always go to a poll; or
- a policy decision such as major transfers of some functions likely to be a matter of significant community concern.

As written the proposed new clause 23, Schedule Three does not include the Commission's proposals to establish CCOs. That is, establishment of say a regional water or transport CCO is not required to go to a poll.

We submit that no case has been made in the Cabinet paper or regulatory impact statement to justify why the establishment of CCOs sits outside the democratic right to determine what is best at a local level. It is also unclear to us what the practical difference between a transfer of roads, water or RMA to another local authority (which requires a poll) and what is effectively a transfer to a CCO (where no poll is required). In circumstances where all affected local authorities agree with the proposal it is probable that a poll would succeed, in which case a poll might then be unnecessary.

16 Section 82(1), Local Government Act 2002.

Recommendation

That the Committee:

9. **agree that the Commission be required to consult during the reorganisation process using a process or processes in accordance with section 82 of the Local Government Act**
10. **agree that the proposed new subclause 23(1)(e), Schedule Three be amended by adding the words "local authority or to a council controlled organisation" after the word "another". This amendment would require polls for transfers of transport services, water services and RMA to CCOs (subject to the amendment in recommendation 11 below)**
11. **agree that the proposed new clause 23, Schedule Three be amended by adding a clause that reads *"Despite subclause 1(e) a reorganisation that has the support of all affected local authorities need not proceed to a poll"* or similar**

Time limits on reorganisations

The Bill appears to propose a repeal of the present clause four, Schedule Three of the principal Act. This clause prohibits what the Bill would refer to as reorganisation initiatives and investigation requests where a local authority has been the subject of a reorganisation and the scheme contains a time limit on new initiatives.

However we submit that some protection is still needed. Even unsuccessful reorganisation initiatives are unsettling for those involved 'on the ground'. We suggest that continual reorganisation can impact on organisational morale, retention of staff, community perception of the value of democracy and the like. It is not obvious to us that undermining any of these will promote quality service.

We also observe that any organisational change takes time to successfully implement and 'bed in'. Systems and culture need to be developed, often from scratch. That is to say, that the full benefits of a reorganisation can take some time to materialise.

We would agree that the clause four of the principal Act does not sit well with the wider range of reorganisation proposals that the Commission may make. For example, the prohibition would prevent the Commission from investigating a transport services CCO in one year, and a water services CCO in the next. We submit that clause four, Schedule Three of the principal Act needs to be retained with rewording to reflect the wider range of reorganisation proposals. We would be happy to work with officials to develop appropriate wording.

We also recommend that the list of factors that the Commission has regard to when receiving an application should be extended to require it to have regard to the time elapsed since the last investigation of the same or substantially similar nature. This might also refer to any changes in circumstances since the last investigation.

Recommendations

That the Committee:

12. **agree that clause four, Schedule Three of the principal Act be retained with amendments to provide for the wider scope of reorganisation.**
13. **agree that the proposed new clause seven, Schedule Three be amended by adding a new subclause (b) that would read "the time elapsed since the last investigation of the same, or substantially similar nature, and any relevant changes in circumstance in the intervening period".**

Transfer of assets and liabilities

It has been far from clear whether the Government intended that the water assets would transfer to the CCOs.

Officials have advised that the intended water services CCOs would be asset-owning rather than asset-managing. We assume this is the position where the Commission investigates other opportunities.

Our reason for raising this issue is to note that a transfer of assets that is not undertaken with proper consideration of all the implications could place some local authorities at risk. For example, most local authorities have borrowed to fund their capital expenditures on roads and water. Transferring assets, and not the debt that funded those assets, could potentially leave local authorities with debt levels that sit beyond prudential limits when compared to revenues.

We do not consider that the matter is as simple as holding debt incurred to build a water scheme within a council to later transfer to the CCO in question. Ever since the abolition of loan polls in 1996 local authorities have moved to corporate borrowing practices, that is to say that councils borrow to finance a balance sheet as opposed to borrowing and managing in jam jars.

This 'cuts both ways' in that transferring too much debt to a CCO might equally 'hobble' a CCO before it begins.

The proposed new clause 11 of Schedule Three sets out a series of objectives that the Commission must consider when undertaking an investigation, with clause 12 providing a similar role with respect to reorganisation proposals. We suspect that this matter is something that should be more appropriately considered at the reorganisation plan stage, and therefore sits within the ambit of subclause 12(2). Yet consideration of this matter does not seem to be adequately captured within the scope of section 12(2). The impact of a transfer of assets and debt is better described as an implication.

Recommendations

14. That the Committee agree that the proposed new subclause 12(2), Schedule Three be amended by adding the phrase, *"and the financial and service implications"*.

Local Government Commission

Much of the proposed new sections 31B to 31H relate to the reestablishment of the Local Government Commission as a largely separate entity. These provisions are largely mechanical, and relatively standard for Crown entities.

Ministerial Expectations

The proposed new section 31A provides the Minister with powers to set expectations for the Commission. These include powers to specify:

a. issues, problems or opportunities that the Commission must regard as having high priority for investigation
b. geographic areas that the Commission must regard as having high priority for investigation
c. geographic areas that the Commission must not investigate.

We have no concerns about the first of these powers, as any government will have particular issues or concerns of a policy nature. This seems to provide a power for the Minister to state any particular concerns as a priority, for example a particular Minister might want to focus on improving transport services or the delivery of RMA functions.

We are more concerned about the second, and particularly the third. This power might simply be used to direct the Commission not to give priority to areas that have recently been the subject of an investigation. However there is potential that these powers might be used to investigate a particular area, or not investigate another area for political motives.

We submit that this power is too broadly drawn. We would be more comfortable if the proposed sections 31A(2)(b) and 31A(2)(c) were deleted altogether. An alternative (second best) solution would be to delete the proposed section 31A(2)(c) or amend it to permit the Minister to require the Commission to assign investigations in some geographic areas with a lower priority.

Where these powers are used, they should be used transparently. As currently worded, these powers come with no obligation to consult anyone (section 31A(3) says only that the Minister may consult anyone he or she feels it appropriate to). Similarly there is no expectation that a communication given under this section would be notified, although such a communication would be discoverable under the Official Information Act.

We would expect that as a minimum the Minister would be required to consult:

- the Commission
- the local government sector, through its representative organisation Local Government New Zealand and

- any other Minister who is likely to be interested in, or whose responsibilities might be affected by the Minister's proposed expectations.

The current section 31A requires the Commission to publish any statement of expectations on its website. This provision has not carried through into the proposed new section 31A. Transparent publication of any expectations is an important check on overtly political use of this power – we can therefore see no obvious rationale for removal of an obligation to publish. This might, for example, form part of a statement of intent or work programme.

Recommendations

That the Committee:

15. agree that the proposed new subsections 31A(2)(b) and subsections 31A(2)(c) be deleted

16. agree that the proposed new subsections 31A(3) be amended to require the Minister to consult the Commissions, the Local Government Association of New Zealand Incorporated[17], and any interested or affected Ministers

17. agree that the Commission be required to publish any statements of Ministerial expectations as part of its statement of intent.

Membership

We support the proposed amendment to allow for the appointment of up to two further Commissioners. There are times when the Commission has particularly high workloads and this is a sensible mechanism for managing workload, and ensuring the operation of the Commission is not unduly hindered by the sudden lack of availability of a Commissioner.

There is no requirement on a Government to appoint or even consider people with a background in local governance, the management or delivery of local services or infrastructural management and delivery. Although past practice has always been that at least one member of the Commission to have been a former Mayor or Chairperson of a local authority, and often two, this needs to continue.

We submit that there should be a requirement to appoint at least one person who has served as a member of a local authority. Experience and pragmatism count.

Alternatively, the Minister should be placed under a requirement to consult with the sector in making appointments to the Committee.

[17] This is the legal name of the organisation currently trading as Local Government New Zealand, and is the name used elsewhere in legislation (such as the Rating Valuations Act 1998).

Recommendations

That the Committee:

18. agree that a new subsection 33(2A) be added to the Bill requiring that at least one member must have served as a member or Chief Executive of a local authority

19. agree that the proposed new subsections 33(2A) be amended to require the Minister to consult the Local Government Association of New Zealand Incorporated before making an appointment to the Local Government Commission.

Disputes

SOLGM notes the provisions that empower the Commission to resolve disputes where authorised in the Bill, and where one or more of the parties to the dispute refer the matter to the Commission. This is an important backstop, especially in the establishment phases of CCOs when shareholders are more likely to have disputes over matters such as initial shareholding. We also note that the Commission will have powers to recover the costs of the dispute resolution process, and may apportion recovery based on the merits of the initial positions of the parties. This should act as a disincentive to push for untenable positions.

We have two issues with regard to the disputes provision. Local authorities are required to send the Commission all information that is relevant to the matter. This information is explicitly removed from the scope of the Official Information Act 1982 until the dispute has completed the resolution process. This is appropriate – but covers the information only at the point that it arrives in the Commission. There may be information created in the course of the local authority's supply of the information. Is there merit in extending the protection to information provided in the physical supply of information by the local authority?

Secondly, the proposed new subsections 31H(4) and (5) each contain references to giving notice to the Mayor and Chief Executive of each party with regards to the dispute. The concept is fine, but as worded these provisions do not recognise that regional councils may be a party to this dispute. These may be common circumstances, for example if a dispute involved a transport services CCO that was taking on passenger transport or transport planning activity, an economic development CCO or some of the shared services CCOs.

Recommendations

That the Committee:

20. agree to extend protection under official information law to include information about a dispute that is supplied to the Commission and

21. agree that the proposed new subsections 31H(4) and (5) be amended by adding the words " or Chair of a Regional Council, …" after the word Mayor.

Bylaws

SOLGM considers that the bylaw provisions in this Bill are complex, inconsistent between the different types of CCO and therefore carry with them the potential to inadvertently create issues similar to the traffic issue Parliament validated last year. Powers to regulate should be clear and consistent as circumstance allows. We are uncertain that the differences between water and transport services CCOs are always warranted.

SOLGM notes and agrees with comments in the Cabinet papers to the effect that *"extending bylaw-making powers to CCOs would be 'without precedent and unlikely to be justified. It is appropriate that this power and the power to appoint enforcement officers are exercised by fully democratically accountable governing bodies (i.e. parent councils and are separated from operational entities for constitutional reasons and to provide checks and balances).'"*[18] Joint Committees for a Water CCO
The proposed new section 56J of the Bill requires the shareholders in a water CCO to create a joint committee (in essence a bylaw committee) and delegate that joint committee the responsibility to appoint and 'warrant' enforcement officers and commence enforcement actions. In practice, this requirement will mean that what was meant to be an empowering provision around the establishment of a joint committee of shareholders (as per the new section 56W) becomes mandatory.

It is unclear to us whether the creation of a joint committee specifically to oversee bylaws is necessary. The relevant provision in the Local Government (Auckland Council) Act requires the Auckland Council to appoint enforcement officers to enforce compliance with bylaws, and requires the Council to consult Watercare to ensure sufficient officers are appointed.

We accept that this result is easier to achieve for a CCO that has but a single shareholder. In all honesty the water bylaw powers are largely about asset protection and the unauthorised taking or misuse of the water supply. It is not the interests of the asset owner or the general public for people to take the regulation and exercise of these powers seriously, after all its the public health at risk.

Recommendation

22. That the Committee agree that the proposed new section 56J be removed from the Bill.

[18] Minister of Local Government (2016), *Local Government – Better Local Services Reforms*, paper to the Cabinet Economic Growth and Infrastructure Committee, page 38.

Bylaw Powers for Transport CCOs

It appears that this Bill provides the Commission with fairly extensive powers to transfer bylaw-making powers from local authorities to transport services CCOs. It appears in most instances the power to set and enforce the bylaw rests with the CCO. We invite the Committee to reflect on the incongruity between the Cabinet paper comments about the inappropriateness of transferring powers to make and enforce local legislation to bodies that are not democratically elected and what the Bill proposes with respect to the transport services CCOs. We cannot find any particular rationale that would see a joint committee required for bylaw and enforcement powers in water but not in roads.

CCO Accountability Documents

SOLGM would like to note the importance of strategic thinking for local authorities. Within the LGA, local authorities make strategic decisions through their service delivery plans, infrastructure strategy, financial strategy and long-term plan with a high level of community engagement through a consultation document. The integration of all of these elements is vital for the creation of a strategic and forward-thinking community that will meet "current and future needs." This responsibility is currently vested with local authorities. Through these key elements local authorities make considerations and trade-offs to optimise efficiency and effectiveness of service delivery looking at timeframes of 10 years, 30 years, with some local authorities choosing to look beyond at 100 years in the future.[19]

SOLGM therefore generally supports the new accountability provisions that apply to substantive CCOs. The amendments we propose here are generally of a technical and practical nature.

Service Delivery Plans

SOLGM supports the requirement that substantive CCOs prepare a service delivery plan. This document is, broadly speaking, the equivalent of a long-term plan in a local authority. These documents, and the infrastructure strategy, provide the CCO with a strategic direction, ensure integration with the parent local authorities own strategic direction, and generally provide for sustainability of service.

We have two concerns with the provisions as currently worded. The first lies in the content. The proposed new section 56C(2) generally replicates the relevant parts of schedule 10 of the Act.

We think the wording of this section could be improved. Some aspects of the drafting appear unduly vague. The formulation in subsection (a) "how the organisation intends to …" has been used elsewhere in the Local Government Act and has generally caused confusion. Similarly the use of the term "environmental factors" could easily be interpreted as a reference to the physical or natural environment. We suspect that the Government's intent was that a service delivery plan includes the following:

(i) the shareholders' objectives and how the organisation contributes to the achievement of these objectives
(ii) the intended levels of service
(iii) programmes of capital expenditure and maintenance necessary to achieve the intended levels of service
(iv) demographic, economic and other factors that give rise to the need for expenditure (Note: this formulation draws loosely on similar provisions in section 101A of the principal Act).

[19] Waimakariri Infrastructure Strategy 2015-2115.

The second concern we have in this area is that there is no obvious process through which the CCO engages with the shareholding local authorities on the content of a service delivery plan. The proposed new section 56E provides that the plan cannot be adopted without the shareholder's approval, but the process of working with shareholding councils should begin well before this point. A provision similar to this for statements of intent should be required (we direct the Committee's attention to clauses 2 to 4 of the present Schedule 8 as the model).

Recommendations

That the committee:

23. agree that the proposed new section 56C(2) be deleted and replaced with "the service delivery plan must set out:

(i) the shareholders' objectives and how the organisation contributes to the achievement of these objectives

(ii) the intended levels of service

(iii) programmes of capital expenditure and maintenance necessary to achieve the intended levels of service

(iv) demographic, economic and other factors that give rise to the need for expenditure."

24. agree that substantive CCOs be required to seek and consider shareholder comments while preparing a service delivery plan.

Infrastructure Strategies for CCOs

SOLGM supports the requirements that transport services and water services CCOs should have an infrastructure strategy in place, and notes that other substantive CCOs may be required to have a strategy. The strategy reconciles the long-term economic, demographic and environmental influences with asset needs and realities. SOLGM therefore regards the infrastructure strategy as critical to long-term planning and good asset management.

Parent local authorities prepared their first infrastructure strategies as part of the 2015 long-term plans. On the other hand, the infrastructure strategy for a CCO is a separate document. While this might be acceptable in the transition we consider that the infrastructure strategy and the service delivery plan must align and that the best means for doing this is to ensure they form part of the service delivery plan.

Section 101B(6) lists assets that are regarded as infrastructure assets for the purpose of an infrastructure strategy. This includes three waters infrastructure, roads and footpaths and flood protection and river control, and anything else a local authority decides to include. The issue is that

section 101B(6) appears not to apply to infrastructure strategies for CCOs. This is more of an issue for a substantive CCO that is not a transport or water services CCO, and may discourage local authorities from asking other substantive CCOs to adopt an infrastructure strategy. We suspect that the Government would want to encourage local authorities and their CCOs to adopt infrastructure strategies.

And finally, we note that a CCO infrastructure strategy is prepared under the same requirements to consult with shareholders as the service delivery plan. We recommend this in a similar way.

Recommendation

That the Committee:

25. agree that CCO infrastructure strategies after the transitional should be adopted as part of the CCO's service delivery plan

26. agree that the proposed new 56D(3) be amended by deleting the phrase "Subsections (3) and (4)" and replacing it with "Subsections (3), (4) and (6) …".

27. agree that substantive CCOs be required to seek and consider shareholder comments while preparing an infrastructure strategy.

Shareholder Committees

Section 56W requires shareholding local authorities to form a shareholder committee to "collectively manage the interests in performing or exercising their responsibilities powers and duties as shareholders of the council controlled organisation". SOLGM can see the advantages of this approach as a means of providing some streamlining of processes and generating unification for approving the documents set out in section 56W(3).

Exemption

Local authorities do not need to form shareholder committees if each of the shareholding local authorities resolves to separately perform its duties as a shareholder.

We interpret the use of the term 'each' in this context to mean that all the shareholding local authorities have to resolve in this way, or the committee, even one dissent means the shareholder committee must be established. The Select Committee might clarify that this is the intent. Given the intent of a shareholder committee is to streamline and unify the approval processes, a high threshold is justified.

Recommendation

28. That the Committee agree to replace the term 'each' with the term 'all individually'.

Unanimity

Section 56W(4) requires that in circumstances where shareholding local authorities resolve to exercise their shareholders duties individually then the obligations of sections 56W(3) can only be resolved by unanimous agreement. Some of the new CCOs might be extremely large entities, with numerous shareholding local authorities. Although this provision is intended to safeguard the interests of smaller communities, it will mean in practice that each of the documents required under section 56W(3) may sacrifice direction and specificity in the name of compromise. These are important documents, if a service delivery plan or infrastructure strategy is vague, full of pet projects to gain unanimous support etc., there is some possibility that the CCO's ability to generate a successful outcome may be compromised. We submit that adoption of these documents should require support of a significant majority of the shareholders (however measured) as opposed to unanimity.

Recommendation

29. That the Committee agree to delete the term 'unanimous agreement' in section 56W(4) and replace with *'by resolution of two-thirds of the shareholding authorities'*.

Committee Membership

We have been advised of a potential disconnect between the provisions for a joint shareholder committee and the present section 41A. We believe this to be an unintended consequence as opposed to a drafting error.

Section 41A establishes that a Mayor is a full member of all council committees and subcommittees. This appears to extend to the shareholder committees that are established under the proposed new section 56W of this Bill. So for example, a multiply owned CCO in Canterbury would have a least ten members (all of whom would be Mayors).

There may be an issue with quorums. Theoretically if, for example, each council out of ten councils appoints its Mayor to the Committee there is no issue, although we are unsure that policy makers contemplated this possibility. The quorum in this scenario would be six. But for each council a Mayor may not be available at all times, therefore another representative from that council would be required as a member and the committee increases by one. So if each council in our example appoints another representative as a member to the joint committee there would be twenty people on the shareholder committee and consequently the quorum would increase to eleven.

We do not believe this was intentional, and submit that this needs to be clarified. The proposed amendment to s41A below achieves this without disturbing other arrangements that may be in place.

Recommendation

30. That the Committee agree that section 41A(5) be amended by adding the phrase *"other than a joint shareholders committee established under section 56W of this Act".*

Distribution of Surpluses

SOLGM notes that water services CCOs are expressly prohibited from distributing a surplus to any of its shareholders. The Cabinet paper suggests that this restriction is to 'head off' potential community opposition to the changes and undue complications to negotiations around Treaty claims.

SOLGM agrees that both these concerns have validity. For example, in 2006 and 2007 this Committee considered two petitions from Auckland ratepayers over a 'charitable payment' that Metrowater (then an Auckland City Council subsidiary) made to Auckland Council.

However, we are also unclear why this same rationale has not been equally applied to the proposed transport services CCOs. Public concern about any charging for road use is likely to be of equal concern – especially when recovered via coercive taxes such as fuel excise and road user charges.[20] Freedom of movement may not rank quite as highly as water, but is still one of the basic freedoms of New Zealanders. Equally it is unclear to us why a company with a power to charge and a power to distribute to shareholders might not attract interest of some parties during Treaty settlement negotiations.

We are also unclear whether some common local government policies and practices would be regarded as a payment for the purposes of this clause. The Committee and officials should consider and clarify the ambit of clause 56H(a), including whether this will extend to the ability of a water services council-controlled organisation to:

- provide discounts to any owner or shareholder
- provide rebates to any owner or shareholder
- make subvention payments to shareholders or
- accept or receive tax loss offsets from its shareholders.

Recommendation

31. That the Committee agree to add a provision prohibiting transport services CCO from distributing a surplus to shareholders.

[20] Those with longer memories may recall the so-called Better Transport, Better Roads reform package of the late 1990s. Concern regarding the control that profit-oriented road companies might have over pricing decisions were prevalent, and ultimately one of the reasons this package did not proceed.

Development Contributions Policies

Development contributions policies are not standalone documents. Setting development contributions is an important policy choice for local authorities. Some local authorities have 'growth pays for growth' policies and make the maximum use possible under law, some local authorities choose to incentivise growth by not charging interest, some smaller local authorities have no development contributions at all. There will be tensions between substantive CCOs that have the interests of the CCO as their primary driver, and the shareholding councils that may have wider policy considerations.

Development contributions are one of the outputs of a funding policy process set out in section 101(3). In that process local authorities are required to consider and expose the following for each activity:

- the community outcomes
- who the beneficiaries of the activity are
- when benefits accrue
- whether there are any exacerbators[21] and
- the costs and benefits of funding the activity separately.

These policies are subject to public consultation. Although a development contributions policy also has to explain why development contributions are being used, with reference to the above, these policies do not need to (and usually do not) refer to other sources. Our point is that the judgements a CCO board might make in this area will effectively override the policy judgements of local authorities in a number of ways.

We are therefore unclear that an unelected board of a CCO should be able to simply "require" a local authority to amend its development contributions policy, and without a direct requirement to consult the affected local authorities. This should be a matter for agreement between the shareholding local authorities and the board of the CCO, possibly as part of the funding components of a service delivery plan or statement of intent. In the event that a dispute arises this might then be treated as a matter for the Commission to resolve under the proposed new section 31H.

The Bill requires the administering local authority to pay all development contributions to the CCO, less the reasonable cost of administering the policy. This raises a number of questions of a second order nature – for example would the cost of hearing an objection to a water services related part of a development contributions policy be an administrative cost. There is another issue of a fundamental nature – which is that an administrative cost cannot be regarded in any way as a capital

[21] An excerbator is an individual or group whose action or inaction creates a need for expenditure. This consideration is often used as a part justification of a development contributions policy in that a development adds to existing demand that might require a capacity extension.

cost due to growth. The practical effect of this is that any attempt to recover this cost through a development contribution would be ultra vires. We submit that the Committee needs to make amendments to all references to 'capital expenditure' in the part of the principal Act that empowers assessment of development contributions to add in the administrative costs of the policy.[22]

Development contributions provisions come with:

- the right to request reconsideration
- rights of objection
- the potential for developers to enter into agreements for the private provision of infrastructure and
- rights to a refund in some circumstances.

Most of these provisions are worded in such a way that the obligation to undertake the work, or make the decision rests with the local authority. That is to say the policy is the local authority's. For example, it is the local authority's job to reconsider a development contribution or arrange for the hearing of an objection (including paying the people who hear it and providing free administration support). The development contributions provisions are written from the perspective of a two party relationship, which does not sit well with what really is a three-way relationship. We suspect that there are a large number of consequential amendments required including the addition of "or council controlled organisation" to subpart five, part eight of the principal Act.

Recommendations

That the Committee

32. agree that substantive CCOs and their shareholding local authorities should agree on the contents of amendments to development contributions policies and

33. agree that disputes between substantive CCOs and their shareholding local authorities regarding the content of any proposed amendments should be resolved by the Local Government Commission under the proposed new section 31H

34 agree that subpart five of part eight of the principal Act be reviewed to ensure that recovery of the costs of administering the policy can be legitimately recovered via development contributions

35. agree that subpart five of part eight of the principal Act be reviewed to ensure that the provisions now reflect what has become a three way relationship between the developer, the local authority and the CCO.

[22] For example, the purpose of development contributions in section 197AA of the principal Act, the principles of development contributions in section 197AB of the principal Act, and section 199 of the Act. There may be other references of this nature.

Taxation Matters

Note: SOLGM gratefully acknowledges and thanks PwC for their assistance with these aspects of our submission.

The taxation laws that apply to local authorities are complex and unusual. The taxation rules applicable to local authorities are complex and unusual in the New Zealand context. Local authorities are only subject to income tax on certain streams of income from CCOs (as specifically defined for tax purposes). Rules in relation to other taxes, such as GST, follow general principles with certain specific taxes rules being applicable to specific local authority related matters (e.g. rates, resource consents etc.).

The tax rules that apply to CCOs follow usual relevant tax rules (e.g. partnership tax rules apply if the CCO is a partnership). The historical context to the current tax rules as they apply to CCOs and local authorities is largely to ensure that commercial activities that are carried out externally from local authorities and which compete with private sector enterprises do not receive a tax advantage.

Because of the peculiarity of the rules applicable to local authorities, it is important that ambiguities are eliminated where possible, and the scheme and purpose of the tax legislation is maintained. Furthermore, it is also imperative that the relevant tax legislation is easy to identify and interpret.

The relevant Cabinet decision determined that the establishment of CCOs would be tax neutral. We support this policy objective but are not certain that the Bill as presently drafted achieves this.

Tax Status of Multiply Owned or Substantive CCOs

Section 11A of Local Government Act 2002 (LGA 2002) establishes that local authorities must consider the contribution that a group of "core services" make to the community. These include:

(a) network infrastructure:
(b) public transport services:
(c) solid waste collection and disposal:
(d) the avoidance or mitigation of natural hazards:
(e) libraries, museums, reserves, and other recreational facilities and community amenities.

The Local Government Act 2002 Amendment Bill (No 2) aims to enable local authorities to work together to deliver these services in a more efficient and collaborative manner through more flexible reorganisation.

However, any reorganisation that results in local authority activities being transferred to a CCO mean that these activities will become subject to income tax at the CCO level, as will any income

received by a local authority from a CCO. We agree that CCOs that are competing with the private sector, or are providing a service where private sector provision is possible should be paying tax.

However many of the CCOs that this Bill would create will not be competing with the private sector, often because a private provider would lack regulatory authority.

We submit that a CCO should be subject to the same tax rules *as a local authority* where:

- the reorganisation involves the establishment of a CCO which is wholly owned by a local authority or local authorities; and
- the activities are core services of a local authority (as defined by section 11A); and
- the re-organisation involves the delegation or transference of local authority powers and/or core services; and
- the CCO is unlikely to compete with private sector enterprise, or a private sector enterprise is prohibited from providing the services as it does not have the regulatory authority to do so.

There is already tax precedent in this area. We refer to the New Zealand Local Government Funding Authority and Auckland Transport, which are both included within the definition of a "local authority" in Section YA 1 of Income Tax Act 2007 ("ITA 2007").[23]

We further note that this outcome could possibly be achieved by including "a substantive council-controlled organisation" and a "multiply owned council-controlled organisation" within the definition of a "local authority" in section YA 1 of ITA 2007.

Recommendation

36. That the Select Committee agree that CCOs established under a reorganisations and that are wholly owned by local authorities, provide core services, and do not compete or are unlikely to compete with private sector enterprises should be subject to the same tax treatment as a local authority.

[23] We note that that the commercial port related commercial undertakings of Auckland Transport remain subject to income tax.

Water Services Council-Controlled Organisation

As alluded to above, it appears that a water services council-controlled organisation will be subject to income tax if it is a company or an "entity" that has a profit purpose (i.e. it is a CCTO).

Due to the proposed prohibition on water services council-controlled organisations being able to pay a dividend or distribute any surplus to any owner or shareholder then any profits will be subject to income tax wholly within the water services council-controlled organisation. An exception to this would be where a water services council-controlled organisation operates through a limited partnership, in which case the profits/surpluses of the limited partnership are "allocated" to the partners rather than "distributed".

It would appear that the proposed amendments would not preclude subvention payments being made to other loss making entities within the group provided the required shareholding thresholds are maintained (i.e. 66%). However, this may not be available to multiply owned council-controlled organisations particularly where new shareholders are added over time. This potentially creates an inequity between similar entities.[24]

Further, it is possible that water services council-controlled organisations could operate through a limited partnership structure.

Recommendation

37. That the Select Committee agree that water services CCOs should be exempt from income tax. This could be achieved by defining a water services CCO as a "local authority" in section YA1 of the ITA 2007

38. That the Select Committee confirm that the prohibition on water services CCOs distributing surpluses is akin to not operating with the purpose of making a profit.

39. That the Select Committee clarify the ambit of clause 56H(a) including whether this extends to the ability of a water-services CCO to provide discounts or rebates to any owner or shareholder; make subvention payments to shareholders (in the event they are not income tax exempt) or accept/receive tax loss offsets from shareholders (in the event they are not income tax exempt).

[24] Also, potentially between shareholding local authorities; for example, if one local authority has a 70% shareholding interest, and others only minority shareholdings, the majority shareholder can potentially obtain a tax benefit.

Transport Services Council-Controlled Organisation

As alluded to above, it appears that a transport services council-controlled organisation will be subject to income tax if it is a company or an "entity" that has a profit purpose (i.e. it is a CCTO). We note that this differs to the tax treatment of Auckland Transport which is defined as a local authority for the purposes of the ITA 2007.

If the Committee accepts our earlier recommendation that transport CCOs be similarly prohibited from distributing surpluses then the same treatment would apply.

Recommendation

40. That the Select Committee agree that transport services CCOs should be exempt from income tax. This could be achieved by defining a transport services CCO as a "local authority" in section YA1 of the ITA 2007.

Structure of Local Government related tax rules

The rules in Schedule Three of the Bill will apply when there is a reorganisation under proposed section 24 of LGA 2002 (which can include the transfer of assets and liabilities from a "transferring entity" to a "receiving entity"). However, we note that pre-existing tax rules applicable to the transfers of undertakings to CCOs already exist within Schedule Nine of the Principal Act.

The two do not always cohere, for example, the non-application of sections CB6 to CB23 of ITA 2007 following a re-organisation. We consider that the officials should be directed to review Schedule Nine of the Principal Act to determine whether these should be replicated in Schedule Three of the Bill or consolidated to provide one definitive set of tax rules.

See the following for our comments on GST matters.

Recommendation

41. That the Select Committee agree that officials be directed to review the Schedule Three provisions against Schedule Nine of the principal Act.

Schedule Three – General Tax Rules

Schedule 3 sets out *general* rules which will apply for the purposes of the Inland Revenue Acts when a reorganisation under proposed Section 24 of LGA 2002 takes place. These general rules (set out at proposed clause 56) state:

General treatment

> *(1) A receiving entity is treated from the date of transfer as if they were the same person as the transferring entity.*
> *(2) A thing done by a transferring entity before the date of transfer is treated as if it had been done by the receiving entity on the date on which it was done by the transferring entity.*
> *(3) A receiving entity is treated as having held the voting interests and market value interests without interruption from the date on which the transferring entity acquired them.*

It appears to us that the breadth of these general rules could extend beyond what is intended. For example, where a transferring entity transfers some of its assets to a receiving entity (of which it may be a partial owner), an action done by the transferring entity before the date of transfer will be treated is if it we done by the receiving entity.

So, actions resulting in a loss of "good behaviour record" with Inland Revenue, for instance, will be considered to have been done by the receiving entity; as will any other matter covered by the Inland Revenue Acts (e.g. unrelated binding ruling applications, employment related matters etc.)

Recommendation

42. That the Select Committee agree that the ambit of the General Rules be restricted to matters associated with assets, liabilities or voting/market interests referred to in proposed clause 55 (1) of Schedule 3.

Clause 57 Income and Expenditure

The proposed clause 57 is ambiguous as it seeks to specify that income and *expenditure* incurred by a transferring entity before the date of transfer does not become that of the receiving entity simply because of the transfer of assets and liabilities. However we understand the tax losses arising from this same income and expenditure can become the tax losses of the receiving entity under proposed clause 59 (c). Explicit confirmation of this understanding would be appropriate.

In addition *expenditure* on financial arrangements, depreciable property, trading stock etc. are dealt with elsewhere. As a matter of clarity we recommend that references in this clause to "expenditure" be replaced with "expenses".

Recommendation

43. That the Select Committee agree that all references to "expenditure" in Clause 57 be replaced by the term "expenses."

Clause 58 Transfer Values

We note that proposed clause 58(2) deals with items establishing the transfer values of "depreciable property." As a matter of clarity, we assume the definition contained in YA 1 of ITA 2007 applies:

> *Depreciable property is property that, in normal circumstances, might reasonably be expected to decline in value while it is used or available for use—*
> *(a) in deriving assessable income; or*
> *(b) in carrying on a business for the purpose of deriving assessable income.*
> *Subsections (2) to (4) expand on this subsection.*

This means that property which is currently used for deriving exempt income can still meet the definition of "depreciable property."

More specifically, proposed clause 58(2)(a) specifies that where such depreciable property is transferred to a receiving entity and will not be used for deriving exempt income then the transfer occurs on the transfer date at *accounting carrying value* on that date.

We submit that the transfer value in this circumstance should be the *market value*. It is our understanding that this would be consistent with section EE 58(1) of Income Tax Act 2007, which specifically deals with the situation where a person uses depreciable assets for the first time. This is particularly the case where the scheme of Schedule 3 is to assume the transferring entity and receiving entity are to be treated as if they were the same person. The Select Committee should seek officials' advice on this matter.

Recommendation

44. That the Select Committee agree to seek further advice as to whether transfer values for the purposes of clause 58 should be market values.

Clause 59 – Continuity

It is possible that only a part of the operations of a transferring entity is transferred to a receiving entity. In this instance, it is possible that only a portion of a tax loss, loss balance or imputation credit balance should be available to the receiving entity.

Recommendation

45. We submit that the Committee consider whether an apportionment of losses and/or imputation credits may be required and determine a mechanism to achieve this.

Clause 60 - Goods and services tax

The intent of clause 60(2) is unclear and at the very least requires a minor amendment.

Recommendation

46. That the Select Committee agree that Clause 60 should be clarified. In the event that the Committee determines that no such clarification is required, it should be amended so as to insert "output" prior to "tax payable".

Tax implications and reorganisation plans

As alluded to above, reorganisations under proposed Section 24 of LGA 2002 can have far-reaching tax consequences. Even minor alterations in which agency holds what voting rights can have an unintended economic impact.

For example, this could be the case where a re-organisation takes places place and results in a corporate multiply owned council-controlled organisation being established between two local authorities. Tax losses are made over the first 5 years of operation and carried forward. After 6 years, additional local authorities become shareholders of the company. This change in shareholding could compromise the ability of the tax losses to be carried forward.

Although the proposed new clause 11, Schedule Three requires that the Commission consider efficiencies and cost savings, it does not specifically place the Commission under a duty to consider other implications. Tax costs and other tax implications could be just one example of this – at the minimum we would expect that the Commission would take advice to ensure that unintended tax costs to ratepayers do not arise.

Recommendation

47. That the Select Committee agree that that clause 11, Schedule Three be amended to ensure that the Commission is required to ensure that the tax implications for ratepayers are identified in reorganisation plans, and that the reorganisation plans take steps to minimise the impact on ratepayers.

Joint governance arrangements

The proposed Section 24 of LGA 2002 specifically contemplates the establishment committees/joint committees and the delegation of responsibilities, duties and powers thereto. In addition, a joint committee must be established:

- under proposed section 56J of LGA 2002 in respect of multiply owned water services council controlled organisations; and
- under proposed section 56W of LGA 2002 in respect of multiply owned substantive council controlled organisations.

Under section 6 of LGA 2002 a committee or joint committee of a council is specifically excluded from the definition of an "entity". The ramification of this is that such a committee cannot fall within the definition of a Council Controlled Organisation for tax purposes.

However an "entity" does include "unions of interest" and "cooperation" or "similar arrangements". Previous tax concerns have existed around the meaning and boundaries of these terms.

As a matter of clarity we submit that proposed schedule 3 specify that committees/joint committees established for the purposes of a schedule 24 reorganisation are exempt from income tax.

Recommendation

48. That the Select Committee agree that the proposed schedule there be amended to clarify that committees and joint committees established under a section 24 reorganisation be treated the same as local authorities for income tax purposes.

Kiwisaver

There is a possible discrepancy in the treatment of employees moving to CCOs and Kiwisaver.

Recommendation

49. That the Select Committee consider whether clauses affecting the employment status of employees and the application of the Kiwisaver Act 2006 should be included within the new subpart 4, of Part Four of Schedule Three. We understand provisions similar to the present clauses 49 and 50 of Schedule Three of the principal Act would be useful.

Rates Rebates Scheme

One of the lessons from the Auckland reorganisation is that CCO charges are not legally regarded as rates and are therefore excluded from the coverage of the Rates Rebate Scheme. In other words, a metered water charge levied under the Rating Act and payable to a council is covered by the scheme, the same charge levied by a CCO is not.

The practical effect of this is to reduce entitlements of low income ratepayers under the scheme. We understand that Auckland Council now 'tops up' the entitlement that eligible ratepayers receive from its own revenues.

We suggest that this may be an issue that creates opposition to reorganisation proposals, in and of itself. We were therefore unsurprised that paragraph 39 of the associated Cabinet paper appears to contemplate change to the scheme to ensure water and wastewater charges fall within the ambit of the scheme. We can find no such amendment in the legislation and suggest that one is needed.

Recommendation

50. That the Committee agree that water and wastewater charges levied by CCO should be included within the ambit of the Rates Rebate Scheme and amend the Bill accordingly.

Regulation of Performance Measures

The Bill extends the powers of the Secretary to make regulations setting out mandatory performance measures into three areas. The first is that the Secretary must make regulations that set fiscal prudence benchmarks for CCOs. The second is to widen the net of 'corporate accountability' information that must be disclosed in an annual plan. And the third widens the range of functions that the Secretary can set mandatory measures of non-financial performance.

SOLGM agrees that comparing performance can provide local authorities and their communities with useful information. If approached with honesty of purpose and integrity of method, a well-designed, 'lean' comparison of performance can:

- identify leading practice
- provide ratepayers with information with which to compare the levels of service that they receive in return for the rates and charges they pay and
- provide signals about areas of focus (for example, the present regulations reflect a focus that two previous Ministers had on network infrastructure).

There are few local authorities that do not undertake some form of formal or informal performance comparison, even if it is only asking the neighbouring local authorities for their planned levels of rates increase. As we have seen, many are involved in various initiatives that have some comparative elements as an aide to performance improvement.

But there are two common (and key) elements to these initiatives. The first is that the initiatives have a focus on performance improvement – that is to say managing performance as opposed to merely measuring it. An over-reliance on measurement is one of the common missteps that many agencies make when they first start their performance improvement journey.

The second core element, and an absolute fundamental to the sector in all of this is that the accountability is to the local community, not to others. Much has been made of the systems of benchmarking and standards that have been set in District Health Boards and in education. Accountability to the centre should exist in these circumstances as the Crown has both a purchase interest and an ownership interest in DHBs. With local authorities the Crown has a far more limited purchase interest and no ownership interest at all.

Poorly designed systems for comparing performance remove the focus on learning, in a drive to manage to ones' 'position on the table'. That is to say those poor comparisons can focus local authorities on activity rather than results. They can even throttle the very innovation that the Government wants to promote by making local authorities averse to making change in fear that the position on the table might suffer.

Additional disclosures in accountability documents add cost in terms of the time to prepare them for disclosure in the document and the time and resource needed to collect them, and have them audited. We draw your attention to existing regulations around mandatory performance measurement. The so-called benchmarks of fiscal prudence, which include some measures that make for a meaningful comparison, currently take up five pages of an accountability document.[25]

Territorial authorities currently report against as many as 17 measures under the existing regulations, in addition to reporting that is done under other legislation, for example resource consent processing times. We were therefore somewhat surprised that the regulatory impact statement that accompanies this Bill is almost silent on these aspects of the Bill (other than an oblique reference to CCO performance measurement.

Additional Performance Measures

The Bill provides the Minister with the power to direct the Secretary to make regulations adding new activities to the scope of the regulations or to review the effectiveness of existing regulations. Each of these is activated by a notice in the Gazette.

SOLGM has expressed concerns that the performance measures that are currently required under the authority of sections 259 and 261A are focus only on network infrastructure and therefore do not reflect the total ambit of local authority activity. This is particularly true for regional councils – which provide only one of the five groups of network infrastructure. We have also expressed concerns that some of the measures prescribed under the existing regulations are not customer-focussed, and provide perverse incentives. One of the criticisms that the sector levelled against the use of this data in the so-called snapshots was that so much of local government's core activity was not represented. A sensible discussion as to what other measures might provide such a picture is needed.

Good implementation guidance is essential. The Department must be properly resourced to develop this guidance, in conjunction with the sector. There must also be sufficient lead time for local authorities to develop systems for collecting information. Ideally local authorities should have at least eighteen months before the first public disclosure of information to put systems in place, and establish a baseline for reporting purposes. We submit that the Committee should

(i) require the Secretary to issue implementation guidance within three months of making any rules under s261 and

(ii) prohibit the Secretary from requiring public disclosure against any new groups of activity falling into any new rules made under s261 for at least eighteen months after the rules are made.

[25] Presentation of these is very tightly regulated. One of the authors of this submission has been contacted by a local authority that was advised by its auditor that it had to match the colours of graphics in this disclosure to the exact tone of the colours in the graphs in the regulation.

One final comment on this aspect of the Bill. We see that a Ministerial notice under the proposed new section 261B(2) is not a disallowable instrument for the purposes of the Legislation Act 2012. Disallowance motions are a little used tool, but the debate that supports them is a means through which Parliament holds the Executive to account for the exercise of Ministerial powers. Non-disallowance should be used sparingly. We are uncertain what the case for non-permitting disallowance is in this instance – especially when the regulations under section 261 are disallowable.

Recommendations

That the Committee:

51. agree that s261B of the principal Act be amended to require the Secretary to allow at least 18 months lead time on any new regulations made under s261

52. agree to amend the principal Act by adding a new section that requires the Secretary to make implementation guidance with six months of making new regulations under s261B

53. agree to amend references to disallowable instruments in clause 33 by removing the word "not" from line 31 and replacing the words "does not have to" in line 32 with the word "must".

Reviews of Effectiveness

The bill provides the Minister with the power to direct the Secretary to make regulations adding new activities to the scope of the regulations or to review the effectiveness of existing regulations.

We agree that it is appropriate that the Minister be able to direct a review of the effectiveness of these regulations at any time. However, we consider that there should be review of the effectiveness of the existing

a) fiscal parameters and benchmarks

b) reporting against measures set under the authority of section 261A.

SOLGM has expressed concerns about the relevance and usefulness of some of the measures that sit within the present regime. Some incentivise activity for activities sake – for example, one measure requires disclose of the percentage of the network that is resurfaced each year. Many are unclear. Some incorporate aspects that are wholly or partly beyond a local authority's control – for example a local authority must disclose the number of flooding events (SOLGM is unaware that local authorities have responsibility for the weather).

SOLGM considers that a suitable legislative model exists in the, now spent, section 32 of the principal Act (which required the Commission to report on the operation of the Act). We would be happy to work with officials to develop and appropriate provision.

Recommendation

54. That the Committee agree to amend the principal Act by adding a requirement to review the effectiveness of existing regulations made under sections 259 and 261 of the principal Act before making new regulations.

Disclosure of Corporate Accountability Information

Clause 31 of the Bill prescribes the corporate accountability information that local authorities must disclose in any or all of their accountability documents. This is defined as "information relating to the corporate governance of the local authority and indicators of the overall effectiveness of the local authority in performing its role and includes the extent to which the local authority satisfies the expectations of citizens and customers".

As presently drafted this power is excessively vague. We understand that the power to regulate the manner in which such information is presented would probably be regarded as incidental to this power.

We submit that authority to make delegated legislation should be clear, specific and limited and regard this as setting a bad precedent from a constitutional standpoint. The proposed new s259(1)(df) appears to give officials powers to regulate for matters that might be better in legislation.

In preparing this submission we referred back to the Cabinet paper to seek clarity around the type of information the Minister might use this power to incorporate. Beyond a reference to customer satisfaction information (which has made it into the definition), there was no other obvious reference to clarify how this power might be used.

We observe that the setting of a mandatory measure of citizen/customer satisfaction is deceptively simple. To achieve something comparable means a common methodology and common survey instrument, and to acquire information at the level of an individual local authority (say Carterton District Council) would require an extremely large sample size. To provide an idea of the size needed, the former Household Labour Force Survey had a sample size of around 15,000 households (about 30,000 individuals) and had some difficulties generating data of sufficient quality at a *regional* level. Be sure that the cost of generating this information is justified!

We draw the committee's attention to Schedule 10 of the Act, which specifies contents of the four accountability documents. The schedule runs to more than twenty pages of legislation. We submit that successive Parliaments have considered contents of these documents should be clearly and specifically set out in the primary legislation.

We commend this approach to the Committee.

Recommendation

55. That the Committee agree to amend clause 32of the Bill by either deleting the proposed new section 259(d)(f) or deleting the term 'corporate accountability information' and replacing it with a list of the required information.

Fiscal Benchmarks for CCOs

The Bill provides the Minister with the power to establish parameters or benchmarks for assessing the financial management within CCOs. We understand that the intent is to make it easier for local authorities to detect potential issues with the financial performance of CCOs at an early point. While the governance of CCOs has been strengthened with the addition of shareholder councils and the advice that these bodies receive, these will support those doing the performance monitoring.

We do have one practical concern. These benchmarks apply to any substantive CCO. As we have seen that could take in a wide range of different types of entity acting in different industries. In practice it will be difficult to develop parameters or benchmarks that are attuned to the needs and practice of different CCOs other than the very general. Our concern is that poorly set parameters or benchmarks could generate frequent 'false positives' (i.e. a result that falsely indicates an issue) or (worse) 'false negatives (i.e. a result that indicates a false 'green light').

These risks can be mitigated by requiring consultation with the experts in financial management in local authorities and their associated entities: the Society of Local Government Managers and the Auditor General. This is management as opposed to a governance issue.

Recommendation

56. That the Committee amend section 259(4) of the principal Act by deleting all words after "consultation" and replacing with *"with:*

(i) the New Zealand Local Government Association Incorporated; and

(ii) the Society of Local Government Managers; and

(iii) the Auditor-General."

Wellbeing

> *It's for local government to determine whether something is in their core and general area of responsibility or not.*[26] *– Prime Minister John Key*

We would like to conclude our submission with an observation that is something of *obiter dicta*.

The 2012 amendments changed the purpose of local government from "promoting the social, economic, environmental and cultural wellbeing of communities in the present and for the future" to the purpose of local government described earlier in this submission.

The sector strongly opposed this change. It was a response to local authorities undertaking activities that were somehow outside the alleged core business of local government. In fact, there is no evidence that local authorities were undertaking significant activity over and above what they did prior to 2002. In reality this was one Minister's view of the way the world should be.

We were therefore interested to see that community wellbeing has made something of a comeback in this Bill. There are four separate, new references to wellbeing, namely:

- the proposed amendments to section 48R(4)
- the proposed new section 56A(3)
- the proposed new section 56B and
- the proposed amendment to section 97 of the Auckland Act

Most of these references appear to relate to matters that the Local Government Commission has to consider when exercising its powers. It is unclear to us why a body that is charged with helping determine arrangements that are meant to promote good local government is then required to consider something that sits outside the purpose of local government?

It is also worth noting that the proposed new section 56B is an obligation on local authorities to consider the current and future wellbeing when attempting to resolve disputes that relate to the establishment of multiply-owned CCOs. It seems somewhat strange that the legislation would require consideration of wellbeing in one minor aspect relating to one decision and not in others.

We suggest that this Bill is on the right track with regards to this element and therefore recommend that the Committee amend the Bill by also amending the purpose of local government to align it with these changes.

[26] *"Key: Up to Council to Justify V8 Outlay", as* reported in NZ Herald of 12 July 2012.

Appendix

Executive summary

As part of an investigation into the central government project entitled, Fit for the Future, SOLGM conducted a survey of councils to obtain a better understanding of how widely shared service and other joined-up arrangements exist within the local government sector, including how many and where, the nature of the services or activities they provide, and the form and nature of the arrangement. Legislative or regulatory blockages encountered in establishing shared service arrangements have been noted within this report.

Key Findings

- 79% of respondents noted they were involved in more than six shared service arrangements with 18% noting they were in three to five arrangements.

- Two thirds of respondents cited there were no barriers to shared service arrangements. The majority of respondents who had encountered a barrier, found it in the operational aspect of a shared service arrangement, rather than the establishment of an arrangement.

- Some of the barriers encountered were legislative. Two respondents noted barriers in the Rates Rebate Act, while two noted New Zealand Transport Agency (NZTA) regulations, and two cited unspecified issues with the Local Government Act.

- All respondents were involved in a shared service arrangement with other councils, with 53% also involved with a company. Similarly, 85% used a contract for service as the form of shared service arrangement.

- Administration, economic development, roading/land transportation, libraries and tourism were the most common service areas for shared arrangements.

Purpose of the survey

The purpose of the survey is to ensure that policy makers are aware of the full range of options for shared service arrangements that are currently available to local authorities, and of the benefits these options have generated.

Disclaimer: other than some editing to preserve respondent confidentiality the quotes within this document are verbatim, they reflect the views of the individuals who made them and are not necessarily the views of the author or of SOLGM.

Survey design

The survey was made available through SOLGM's LGConnect discussion groups in December 2015. The survey was administered online through SurveyMonkey with electronic links to the questionnaires being sent.

Definition of shared services

The term 'shared services' has various interpretations. For the purpose of this survey, a shared service arrangement exists where two or more local authorities work together to deliver physical services or share capacity to undertake some administrative or support activity such as rate collection. These arrangements might be managed through a contract, joint venture, joint committee, trust, CCO or some other organisational form.

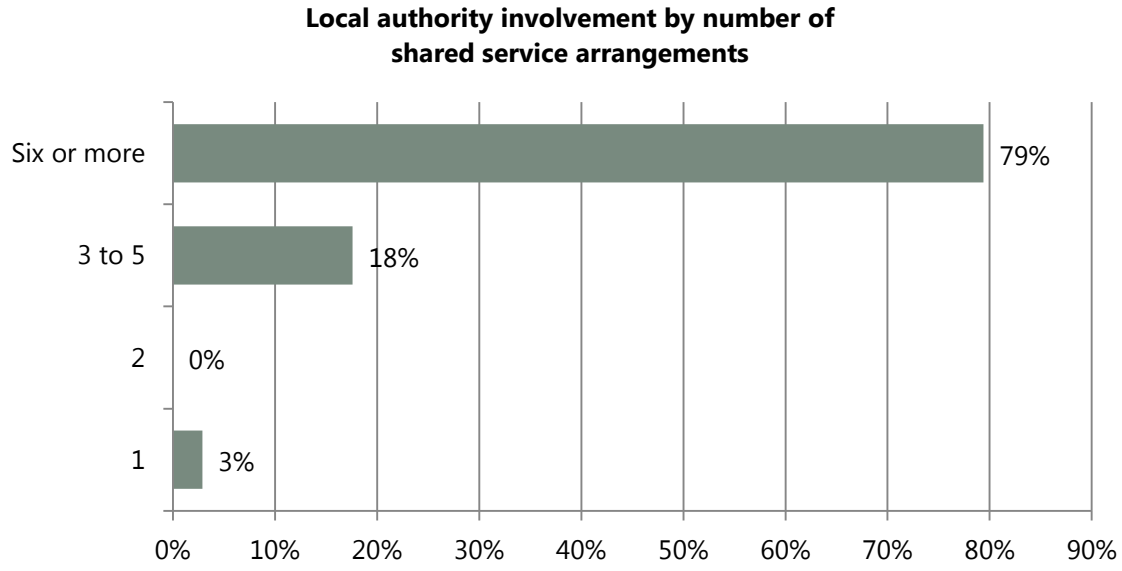
Please note cross-boundary or multi-district approaches to strategy, and arrangements that do not involve at least two local authorities (that is to say we are excluding arrangements that involve only one local authority and entities that are not local authorities) have been excluded as a shared service arrangement for the purposes of this survey. Examples of such exclusion would be in planning or policy development arrangements, such as SMARTGROWTH or the Canterbury Policy Forum.

Respondents

Of 78 local authorities we received responses from representatives of 35 councils. Of the respondents, metropolitan areas were poorly represented (only 2 councils from metropolitan areas responded). There are 16 provincial, 10 rural and 6 regional councils responses within the data gathered. Please note one council remained anonymous.

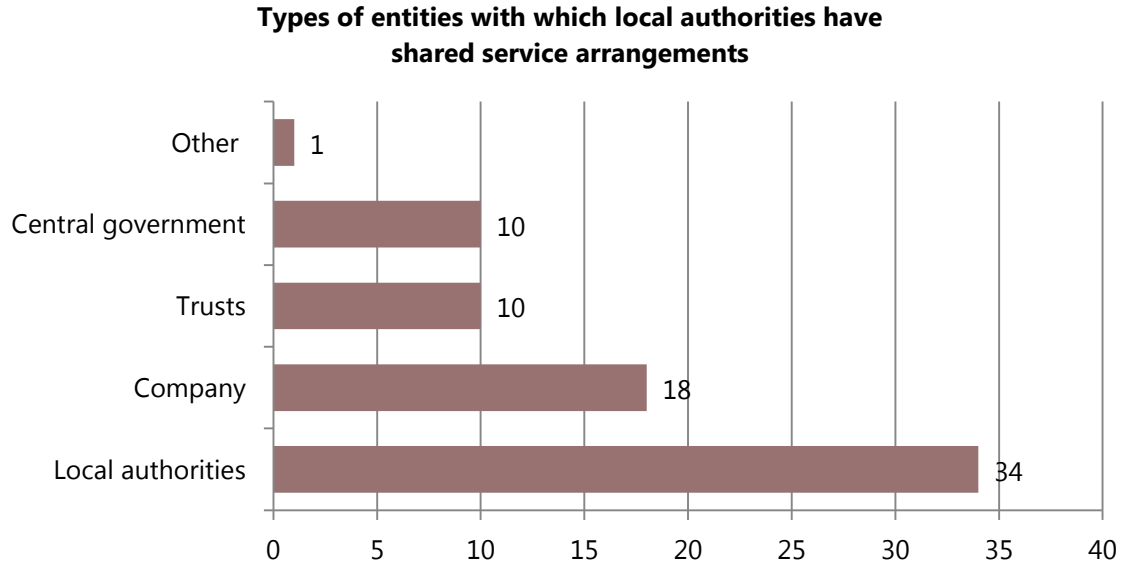
Shared service arrangements

An overwhelming majority of respondents (79%) were part of six or more shared service arrangements, with only one respondent (3%) noting they were in one shared service arrangement. 18% of respondents noted they were in three to five shared service arrangements. The results indicate that shared services are more prevalent than more commonly thought.



Local authority shared service arrangements with external entities

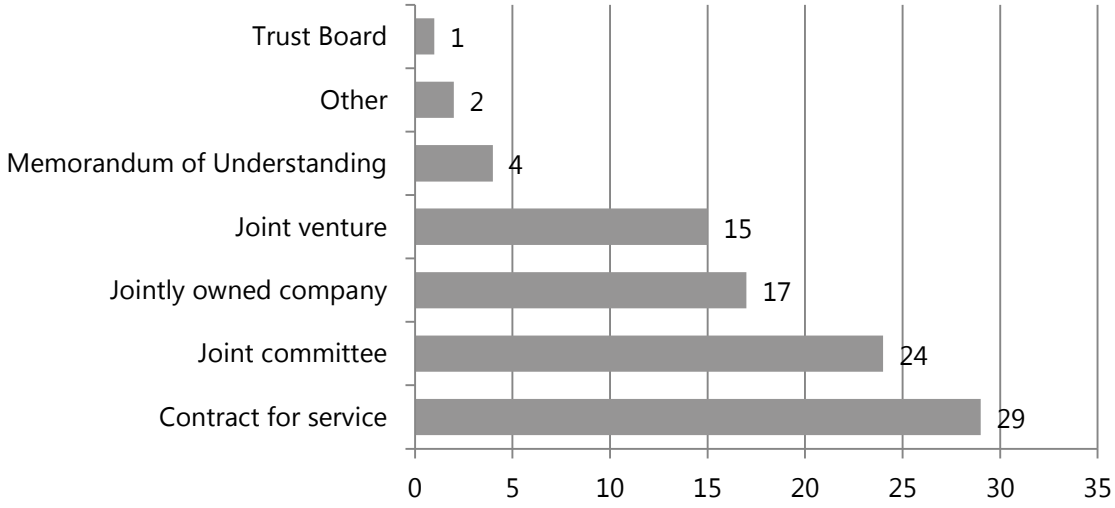
All but one of the survey participants responded to the question regarding local authority shared service arrangements with external entities. Of those survey participants that responded, all were in a shared service arrangement with other local authorities. 53% of respondents were involved with a company, 29% with trusts, and 29% with central government.



Forms of shared arrangements

The most common form of shared arrangement was through a contract for service, with 85% of respondents involved in a contract for service. This was followed with 71% involved in a joint committee, 50% in a jointly owned company, and 44% in a joint venture. A smaller proportion of respondents had a memorandum of understanding (12%), and one respondent noted their form of shared arrangement was a trust board. It is important to note that CCOs are not a necessary condition in establishing a shared service arrangement.

Local authority involvement by forms of shared arrangements



Service areas for shared arrangements

The areas in which the majority of shared service arrangements had been established were; administrative services, economic development, roading/land transportation, libraries, and tourism. 73% of respondents had used the shared arrangement for administrative services, 61% for economic development, 52% for roading/land transportation, 48% for libraries, and 48% for tourism. These results indicate that shared service arrangements occur in areas beyond infrastructure, encompassing the broad services that local authorities provide.

Services	**Number of respondents**
Administrative services	24
Economic development	20
Roading/land transport	17
Libraries	16
Tourism	16
Regulatory services	15
Solid waste/recycling	14
Water/wastewater	12
Sportsgrounds/stadiums	10
ICT services	10
Libraries/museums	8
Consent processing	8
Other transport	6
CDEM	6
Stormwater disposal/land drainage/flood control	5
Parks/reserves	4
Community centres	4
Total number of respondents	33[27]

[27] Two survey participants did not answer this question. Multiple options were allowed for respondents.

Barriers

Two thirds of respondents did not identify any barriers in establishing their arrangement. Of the respondents that cited barriers, comments were provided. The barriers noted varied to each other with most comments reflecting the operational aspect of shared service arrangements.

Two respondents cited NZTA regulations, with one respondent commenting that one of the participating local authorities has to be designated as a Road Controlling Authority (RCA) as the New Zealand Transportation Agency (NZTA) can only fund RCAs. One suggested NZTA rules in the future might create a barrier in sharing capability:

> *In the case of the roading asset management collective in order to qualify for NZTA funding we had to nominate a lead Council that qualified as a Road Controlling Authority. NZTA can't co fund an entity that isn't an RCA.*

Two respondents cited the Rates Rebate Act. One of the respondents noted that charges legally deemed as rates fell within the scope of this scheme, however excluded water/wastewater charges. While not necessarily a legal impediment per se it creates a political disincentive to act within this particular legislation.

Two respondents raised unspecified issues with the Local Government Act. A third respondent noted that they were unclear regarding the role of the Chief Executive in creating a shared service arrangement.

One respondent commented that Kiwirail's governing legislation or practice act as an impediment:

> *Kiwirail is unable to enter into a contract of longer than 5 years under their legislation leaving us somewhat exposed in a multi-million dollar arrangement.*

One council suggested that:

> *What councils are doing with shared services doesn't fully satisfy section 17a. It would be better if the shared services programmes and section 17a reporting demands were better aligned so work is not repeated. We foresee some difficulty with human resources where staff, under individual contracts, are required to change conditions due to work-place/work-scope changes or due to a non-alignment with other councils.*

One respondent mentioned the Resource Management Act precludes a joint development code:

> *Establishment of Local Government Funding Agency establishment required specialist legal advice regarding tax and guarantees. RMA precludes the ability to have a joint Development Code (identical codes must be adopted by each Council)*

Respondents cited non-legal barriers including; transferring assets and getting them valued is a political issue, contracting issues with staff, doubts that central government will honour the so-called 60/40 split where a service is shared and a disaster occurs.

Benefits of shared services arrangements

By and large, respondents cited cost savings as the main benefit from sharing capability. This was followed by building capacity and enhanced cohesion or co-ordination in delivery.

Benefits cited by respondents[28]	**Number of respondents**
Cost savings	22
Building capacity	12
Enhanced cohesion or co-ordination in delivery	11
Better co-ordination in investments	8
Better management of risk	6
Improvements in service levels	6
Better relationships between councils	5
Standardisation of service	3
"Better practice" or "compliance"	3
Better access to funding	3
Miscellaneous	15
Total number respondents[29]	31

[28] We have categorised the comments made by respondents. Responses may be in multiple categories to reflect comments.

[29] Four survey participants did not answer this question.