



The Chair
Local Government and Environment Committee
Parliament Buildings
WELLINGTON

Submission by the New Zealand Grey Power Federation Inc. on the Local Government Act 2002 Amendment Bill (No 2) 2016

Introduction

The Grey Power New Zealand Federation Inc. is a non-sectarian and non-party political, advocacy organisation that aims to advance, promote and protect the welfare and well-being of older people.

The Grey Power New Zealand Federation Inc. is made up of some 75 individual Associations with an overall membership of approximately 68,000.

We thank the committee for the opportunity to comment on this Bill, and note that we wish to speak in support of our submission.

Summary

Grey Power Federation cannot support to Bill in its current form as we consider the proposed changes are inimical to the principles of good local government, since they:

- Reduce transparency of decision making
- Curtail the ability of councils to meet the expectations of their electorate(s).
- Reduce direct accountability to the public

We are concerned that some of the Bill's provisions would fundamentally undermine the nature of local democracy, diminishing the decision-making ability of locally elected representatives and eroding the constitutional separation of local and central government.

We are amazed that the Bill has been put forward without consultation within the sector, and that the NZ Treasury's assessment that the Regulatory Impact Statement only partially met the quality assurance criteria, and that the lack of wide consultation with local government is significant.¹

Further, we are concerned that the Bill seeks to address problems that do not in fact exist, and in doing so has the potential to create the very problems it purports to address.

¹ Department of Internal Affairs (2016), Departmental Disclosure Statement, page 5.



We note that many of the proposed provisions echo the proposals put forward as justification for the model recommended by the Local Government Commission (LGC) for the amalgamation of local government in the Wellington region. Justifications that were based on data that was demonstrably incomplete and incorrect, and which ignored the principle of subsidiarity².

We further note that under the existing Act, local government bodies already successfully co-operate and share services, and that Council Controlled Organisations (CCOs) are used both by individual councils, and to manage joint inter-council, region wide, service provision, for example Wellington Water.

We are particularly disturbed by the increased powers proposed for the Local Government Commission. We consider that the Commission has neither the expertise nor the political legitimacy to initiate investigation into reorganisations, whether these be related to putative amalgamations, boundary changes or transfer of responsibility. We further believe that regardless of any increase in resource or expertise, the proposed increase in powers is contrary to the fundamental principle that decisions should be made at the level at which the outcome is felt, and based on the wishes of the relevant communities of interest.

We refute assertions by the Minister and the Prime Minister that amalgamation of local authorities is a certain method of preventing or reversing increases in rates by controlling demand side. Whilst we acknowledge that in some circumstances, where all parties are willing participants, such improvements can accrue, we note the increased costs, loss of local democratic control and decreased effectiveness of service delivery that has characterised such moves, both in Australia and New Zealand, where it is imposed on unwilling parties.

Transfer of responsibilities

Our primary concern regarding the proposed transfer of responsibilities to the LGC is the loss of consultation and accountability proposed. We believe that the proposed transfer of responsibilities to the LGC is in direct contradiction to the principles of transparency and accountability contained in the 2002 Act and established as the key principles of good governance³. The proposed ability for the Commission to establish CCOs without the consent and potentially against the direct wishes of the electorate, together with the proposal to constrain the matters that must be considered, is counter to all evidence that the best and most sustainable outcomes are achieved when all communities of interest, not just vested interests, are consulted and participate fully in the decision making process⁴.

For example, it appears that the Commission would have the power to mandate the transfer of responsibility for a service to an out of area authority, or company, against the wishes of local

² NZIER, 2012, Merger options for Wellington Councils: Economic analysis of options for merged governance of the Wellington region

³ Irvin, R. A. and J. Stansbury (2004). "Citizen Participation in Decision Making: Is It Worth the Effort?" Public administration review **64**(1): 55-65.

⁴ Ferguson, G., A. Dakers, et al. (2003). Sustainable wastewater management: A handbook for smaller communities. Ministry for the Environment. Wellington,



communities. We consider this to be contrary to the basic principles of representative democracy and accountability.

We are particularly concerned that this move away from a process of public participation, which we consider to be already inadequate⁵ further reinforces the power of vested interests to dominate any discussion and for easily obtained quantitative financial data to be given undue weight when measured against qualitative values which are both difficult and costly to define and to assign proxy values, but which nonetheless frequently dominate the concerns of the communities most directly affected. We believe that in addition to the direct loss of accountability the proposals entail, they would inevitably lead to a lessening in the overall quality of decision making.

Further, we consider that Territorial Local Authorities (TLA) and Regional Councils have ample ability under the existing Act to cooperate and where this is deemed appropriate to contract service provision from another TLA or council. We consider that this provides demonstrable improvements in economic efficiency and service delivery whilst retaining ultimate accountability with the elected council. We would cite the examples of cooperation between Hutt City and Upper Hutt Councils amongst many, as an example.

We also consider the proposed exclusion of certain information, including that related to an investigation by the LGC, from discovery under the Official Information Act would inevitably lead to a loss of confidence in the process, and foster the perception that this exclusion is intended to mask the degree of partiality in the Commission's decisions.

Reorganisations

We are disturbed by the increase in the powers proposed for the LGC. We consider that based on the experience of the recent Wellington and Hawkes Bay amalgamation proposals, the Commission has not the expertise to initiate investigation into reorganisations. Nor do we believe that the Commission has any political legitimacy to intervene in this way regardless of any legal or regulatory authority.

In particular, we are concerned at the change in emphasis in the proposed amendment to section 24AA. The change to the purpose of reorganisation to "promote good local government by enabling and facilitating improvements to local governance and the provision of infrastructure and services." and the deletion of any reference to participation or consultation with and by the affected communities can only be seen as a removal from the democratic process which is entirely inconsistent with the purpose of local government as proscribed by the LGA.

Finally we consider that the argument that amalgamation of local authorities is a means of preventing or reversing increases in rates by controlling demand side, (the Auckland model) and this underpins the need for expanded LGC powers, is demonstrably false. Costs to rate payers in Auckland have certainly shifted, and some areas have indeed have lower rates. Overall however, all

⁵ McNeill, J. K. (2008). *The Public Value of Regional Government: how New Zealand's regional councils manage the environment*. Palmerston North, Massey University. **PhD**.

Forgie, V. (2002). *Submission makers' perceptions of the annual plan process. Empowering communities? Representation and Participation in New Zealand's Local Government*. J. Drage. Wellington, Victoria University Press.



the data to date indicates that cost side changes have been an overall increase, not a decrease. We are concerned that this move has no justification beyond political desire based on a misunderstanding of the economic consequences of amalgamations, especially those that amount to the equivalent of hostile take overs, and which as in the commercial sphere often amount to no more than asset stripping.

Council-controlled organisations

Again we note the success of many CCOs established under the current Act. We consider that as with councils themselves, there is no evidence that so called economies of scale are achievable merely based on size. The size at which any organisation achieves maximum efficiency and effectiveness is largely determined by its function, but also heavily influenced by the environment in which it operates⁶. For example, with many local services sustainability and resilience considerations may and frequently should outweigh any considerations of economic efficiency. We strongly believe that this trade off must be made by the communities affected. Thus whilst we support the use of CCOs as a management tool, we strongly oppose the suggestion that management CCOs would no longer be considered substantive CCOs and not subject to the existing degree of rigour in accountability.

However we are concerned at the behaviour of some asset owning CCOs that can apparently, under NZ Law, ignore the wishes of the shareholding council(s) if the CCO Board considers it in the best interests of the company to do so. We therefore support the requirement for owning council(s) to appoint all directors and to agree all accountability documents. We also support the provision that all CCOs must act consistently with democratically agreed overall council plan and strategies, no matter what constraints these place on the operation of the CCO.

We are concerned that the proposals for CCOs fail to meet the requirements of allocative efficiency, which requires the effectiveness, ie quality as well as quantity, of a service to match the needs and preferences of the customers. The proposals rather seek to remove the CCO from any direct requirement to determine public preferences and to elevate efficiency above effectiveness. As noted above a 'one size fits all' approach is neither warranted nor appropriate.

We note in particular that the proposed funding mechanisms of multiply-owned CCOs based on rating raises concern over the degree of control a council has over its expenditure, and that this has potentially major impacts for smaller councils with a small rating base. We are also concerned that, as LGNZ has pointed out, the Bill's failure to consider the implications of a conflict between a CCOs desire for financial efficiency and cost minimisation may be directly counter to a council's policies such as:

- a buy local procurement policy to strengthen local businesses;
- environmentally friendly transport such as electric cars, cycling and walking; and
- strategies to slow traffic, improve streetscapes, extensive urban planting etc.

⁶ McKinlay, P. (2013). Rethinking local government for rural and provincial New Zealand – a new look at community governance, Local Government New Zealand.



This we feel, would be a particular problem with jointly owned CCOs where there is a wide disparity in size between shareholding councils, and would leave councils with no mechanism to ensure CCOs deliver services that meet local policies and priorities.

Conclusion

Grey Power Federation is very concerned that the provisions of this Bill will also prove a disincentive for people to participate in local government, either as candidates or voters, given the range of significant decisions likely to be placed outside direct democratic control if this Bill proceeds⁷.

We consider that in its current form the Bill should not proceed. We recommend that further and full consultation with the local government sector, iwi and hapu, and other relevant stakeholders and organisations be carried out.

We agree with LGNZ that the significant and far-reaching implications of this Bill are a fundamental challenge to local democracy and the constitutional role of local government in New Zealand.

⁷ Irvin, R. A. and J. Stansbury (2004). "Citizen Participation in Decision Making: Is It Worth the Effort?" Public administration review **64**(1): 55-65.