Regulatory Impact Statement

Local Government Regulatory Systems Omnibus Bill

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Department of Internal Affairs

This RIS provides an analysis of options for the repair and maintenance of existing local government legislation so that it remains fit for purpose. It focuses on the two most complex issues of the twelve identified amendments.

The issues identified for analysis were collated from Departmental advisors, Auckland Council, Local Government New Zealand and the Society of Local Government Managers. The finalised issues were limited to those that could be addressed through an omnibus bill under Standing Order 260(c).

Consultation has been limited to high level proposals with in principle support provided by the external parties consulted.

The frequency of occurrence for all issues is believed to be low and the impact for most is low. However, the repetition of incidents is fairly high as most issues impact the 67 territorial authorities, with some impacting the 11 regional councils.

Data does not exist on frequency or scale of actual incidents or lost opportunities arising from the identified issues. Collecting this data would require a disproportionate amount of time and resources, relative to the minor nature of the issues. A requirement to collect this information would preclude this type of maintenance of regulatory systems.

The level and detail of analysis is proportionate to the narrow scope and technical nature of issues that were considered. The proposed amendments are consistent with an omnibus bill.

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## Executive summary

1. The overarching aim of this initiative is to improve and maintain the effectiveness and efficiency of the regulatory system established by the principal local government Acts.
2. This initiative is in performance of the Department’s stewardship of local government regulation. The Department has undertaken to address some of the known issues within the local government regulatory framework. Twelve amendments were identified that will address issues that cannot or are unlikely to be addressed through other planned changes to the regulatory system.
3. This Regulatory Impact Statement (RIS) directly addresses two of the twelve issues identified for legislative amendments. Although minor, these issues have more significant policy implications than the remaining ten issues that are of a more minor technical nature (a complete list of proposals is included in Appendix A). These issues update the current policy position rather than simply improving the implementation of the existing position.
4. The policy proposals addressed by this RIS are:

* Reduce local government filing requirements and improve document accessibility.
* Clarify the timing of taking office by a successful candidate following a by-election.

1. Implementing the preferred option for the proposals above would require amendments to the following Acts:

* Local Government Act 2002
* Local Electoral Act 2001
* Local Government (Rating) Act 2002
* Dog Control Act 1996

## Status quo and problem definition for initiative

1. Overtime regulatory frameworks require ‘repair and maintenance’ to ensure they remain up to date and fit for purpose.[[1]](#footnote-1) Several Acts form the core regulatory system for local government. As these Acts are individually amended and updated issues begin to arise that need to be addressed to maintain the integrity of the system as a whole. Additionally regulation needs to be kept current to meet contemporary service delivery and representation expectations from communities.
2. The Department has identified a number of small errors and opportunities to modernise the core local government legislation it administers. These errors and opportunities impact the effectiveness of the regulatory system. They impact council operations and the effectiveness of decision making in local government. In this RIS the problem definitions for each issue are addressed in turn.

## Initiative objectives

1. The overarching aim of this initiative is to:

* Improve and maintain the effectiveness and efficiency of the regulatory system established by the principal local government Acts.

1. The policy objectives of the initiative are to:

* **Objective 1** - Clarify and update statutory provisions to give effect to the intended purpose of the Act and its provisions and keep the regulatory system up to date and relevant.
* **Objective 2** - Address regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation.
* **Objective 3** - Remove any unnecessary compliance costs and costs of doing business.

1. The amendments were identified in the exercise of the Department’s responsibility to relevant Ministers for the stewardship of legislation administered by the Department under section 32(1)(d)(ii) of the State Sector Act 1988. These amendments would be included in a Local Government Regulatory Systems bill (the bill). The bill is a vehicle to progress smaller regulatory fixes in a timely and cost effective manner in order to deliver the flow-on benefits to councils and communities.
2. This approach to the Department’s stewardship role is consistent with the Productivity Commission’s July 2014 report “Regulatory institutions and practices”. The Commission found that it can be difficult to find time on the Parliamentary calendar for “repairs and maintenance” of existing legislation. As a result, regulatory agencies often have to work with legislation that is out of date or not fit for purpose. This creates unnecessary costs for regulators and regulated parties, and means that regimes may not keep pace with public or political expectations.

## Options and impact analysis

1. The problems addressed by this initiative were identified from a long-list of potential issues within the local government regulatory system. Table 1 below shows the problems with more significant policy implications that have been included in this RIS.
2. The issues identified for inclusion were those that could not be addressed by non-regulatory means, were eligible for inclusion in an omnibus bill and contributed to the policy objectives. The Department has included two problems in this RIS of the twelve that will be addressed by this initiative and would be included in the proposed bill. Proposals included in this analysis are those likely to have a more than minor impact. A complete list of all twelve amendments is contained in Appendix A of the RIS.

Table 1: Problems addressed in this regulatory impact statement

|  |  |  |
| --- | --- | --- |
| Title | Legislation affected | Page |
| 1) Reduce local government filing requirements and improve document accessibility | Local Government Act 2002, Dog Control Act 1996 | 6 |
| 2) Clarify the timing of taking office by a successful candidate following a by-election | Local Electoral Act 2001 | 9 |

1. Options for each of the problems addressed in this analysis have been assessed for their contribution to achieving the policy objectives. Preference was given to options that the maximised the policy objectives and minimised potential costs.

### 1) Reduce local government filing requirements and improve document accessibility

#### Status quo and problem

1. Statutory requirements for local government to file documents increase the administrative and compliance burdens, and procedural risk for councils. The risk arises from unnecessary compliance requirements that if not followed may give rise to a claim of undue process and question the validity of council decision making processes. Where filed documents are of low value or duplicate existing information the benefits of the additional reporting may not outweigh the costs.
2. Councils are required to file a significant number of reporting documents with agencies. For the most part these are financial, performance and compliance reporting. Many of these documents include high value information to inform audit and decision making processes. This information assists internal and external auditors (for example the Office of the Auditor General). In the format that they are filed, these documents are considered to be of low value to the agencies that they are provided to.
3. Where the purpose of filing a document is to inform the agency of a decision or a matter for consideration or intervention then the act of notification is of high value. But where the purpose of filing is to provide access to information then priority should be given to the accessibility of information rather than the act of filing. Requiring documents to be filed in hardcopy unnecessarily increases administration and compliance costs without improving accessibility.
4. The Department identified four documents that are filed in hardcopy with agencies where the primary purpose is for the public record and access to information and have low value as notifications. They are:

* Council Long-Term Plan (triennial filing) – s93(10)(b) Local Government Act 2002
  + Filed with: Secretary for Local Government, Auditor-General and the Parliamentary Library
* Annual Plan (annual filing) – s95(7)(b) Local Government Act 2002
  + Filed with: Secretary for Local Government, Auditor-General and the Parliamentary Library
* Annual Report and Summary (annual filing) – s98(6) Local Government Act 2002
  + Filed with: Secretary for Local Government, Auditor-General and the Parliamentary Library
* Rating resolutions (as made, generally annual filing – s23(5) Local Government (Rating) Act 2002
  + Filed with: Secretary for Local Government
* Dog control policy and practice report (annual), s10A Dog Control Act 1996
  + Filed with: Secretary for Local Government

#### Options and analysis

##### Policy objectives and outcomes

1. (Obj 1) Statutory provisions are clarified and updated to give effect to the intended purpose of the Act and its provisions and keep the regulatory system relevant:
   1. Documents prepared under the Local Government Act 2002 that are made available for public information should be in accessible formats and locations.
2. (Obj 3) Unnecessary compliance costs and costs of doing business are removed:
   1. Filing requirements should be reduce or removed where the information provided has low value for the purpose of notification.
3. The Department has considered three options with information from the Office of the Auditor General and Parliamentary Library. The outcomes sought from addressing this problem are to both reduce compliance costs and improve accessibility.
4. By improving accessibility the Department is supporting effective decision making and local accountability through transparent local government. It will enable people with disabilities to engage more fully with local civic processes. Accessibility requirements allow greater access to the information within a file for a diverse range of hearing, movement, sight and cognitive abilities. It also improves the reuse of the information. Accessibility standards are likely to change and improve over time as the technology that it supports changes. Flexibility would be required to allow for those changes. Enabling the Secretary for Local Government to identify appropriate accessibility standards that must be complied with will provide this flexibility.

##### Options table

| Option | Benefits/support for outcomes | Costs and risks |
| --- | --- | --- |
| 1. Status Quo – No change |  | Administrative and compliance costs will continue. |
| 1. The identified documents are not required to be filed with government agencies.   The identified documents are required to be made available on council websites and in accessible formats **(preferred)** | Removes filing compliance costs for central and local government and reduces the risk of non-compliance if not filed.  Provides for improved accessibility to documents. In the case of the Dog Control Act 1996 report this would include an additional requirement to the status quo for the inclusion on a council website.  Will support people with disabilities to access information and participate in local government decision making processes. For example, it will enable greater use of screen readers to assist the visually impaired.  It will provide a minor decrease in compliance costs through the reduction of filing requirements for agencies | Increase in administrative costs for local government from providing accessible format. |
| 1. The identified documents are filed with the Department of Internal Affairs and centrally collated for all agencies. | It will provide a minor decrease in compliance costs through the reduction of filing requirements for agencies | This will increase the administrative costs for the Department.  May appear to diminish local authority record keeping responsibilities. |

#### Recommendation

1. Option 2 is the recommended option as it removes the filing requirement completely for non-notification documents and it increases the accessibility of those documents providing benefits to both central agencies and communities. The Secretary for Local Government would identify the applicable accessibility standards. Implementing option 2 has lower compliance costs than the status quo for local authorities. Option 2 will maximise the benefits derived from both outcomes. This proposal will not alter the requirements to make information publicly available within specified timeframes.

### 2) Clarify the timing of taking office by a successful candidate following a by-election

#### Status quo and problem

1. It is unclear when candidates elected to fill an extraordinary vacancy come into office.
2. This lack of clarity arose after the 2013 amendment to the Local Electoral Act 2001. Prior to the amendment, there was a difference between when a person declared to be elected before polling day in a triennial election, and when a person who was successful in an election, came into office. The latter provision applied both to triennial elections and by-elections. The 2013 amendment ensured that all candidates in a triennial election came into office at the same time.
3. However, the 2013 amendment did not address by-elections. This error may have arisen as the time when someone is appointed to fill an extraordinary vacancy did not change in the 2013 amendment. But people may either be elected or appointed to fill an extraordinary vacancy, so the 2013 amendment created a gap in the law.

#### Options and analysis

##### Policy objective and outcomes

1. (Obj 2) Address regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation:
   1. Provide for a consistent approach to local elections.
2. When the Local Electoral Act 2001 was amended in 2013, it sought to align the time that candidates in triennial elections came into office, whether they were elected unopposed or were successful in the election. Unfortunately, the amendment did not address the time that candidates in other elections (i.e. by-elections) came into office. The current provision for when people appointed to fill extraordinary vacancies come into office only applies to appointments, not by-elections.
3. The current provisions are unlikely to give rise to a legal challenge because it is possible to apply a purposive approach and interpret s115 (1) of the Local Electoral Act 2001 as applying equally to by-elections (effectively ignoring the word “triennial”). There appears to be an intention within the legislation that all elections will be treated the same, with the necessary modifications.[[2]](#footnote-2)
4. To provide for the outcome to address this problem only one option was identified. Option 2 in the table below provides for a consistent approach to the timing of coming into office following a by-election.
5. We considered keeping the status quo, but that would continue the current lack of clarity for when successful candidates in a by-election come into office.

##### Options table

|  |  |  |
| --- | --- | --- |
| Option | Benefits/Pros | Costs/Cons |
| 1. Status Quo |  | Perpetuates uncertainty about when a successful candidate in a by-election comes into office. |
| 1. Amend section 115(1) so that it refers to “an election” rather than “a triennial general election” **(preferred)** | It will be clear when a successful candidate in a by-election comes into office.  The by-election process will consistent with processes for the triennial elections.  Beneficial to the efficiency and effectiveness of local government because it provides clarity and consistency. | None. |

#### Recommendation

1. We propose section 115 of the Local Electoral Act 2001 is amended to provide that a successful candidate in a by-election comes into office on the day after the day on which the official result of the election is declared by public notice under [section 86](http://www.legislation.govt.nz/act/public/2001/0035/latest/link.aspx?id=DLM94704#DLM94704). This is consistent with the processes for the triennial elections.

## Consultation

1. During the initial issue identification phase the Department invited suggestions from Auckland Council, Local Government New Zealand and the Society of Local Government Managers.
2. The final list of proposed amendments was provided to both the Society of Local Government Managers and Local Government New Zealand. They support the amendments in principle.
3. Consultation was deliberately limited to local government representative organisations rather than a broader consultation with all local authorities. This was to manage expectation for the types of issues that could be included in an omnibus bill and to avoid competing with higher priority local government policy initiatives. The feedback was generally limited to in principle support for the proposals.
4. In December 2015 the Department consulted the following government agencies on the detailed proposals.

* Ministry for the Environment;
* Ministry of Business, Innovation and Employment;
* Ministry of Justice;
* Ministry of Transport;
* Office for Disability Issues;
* Parliamentary Library;
* Te Puni Kōkiri;
* the Treasury; and
* Department of Prime Minister and Cabinet (informed).

1. The Department has provided the detailed proposals to: Local Government Commission officials, Local Government New Zealand, Society of Local Government Managers. It provided one specific issue to the Independent Māori Statutory Board and Auckland Council, which was later discounted as outside the scope of an omnibus bill.
2. Consultation has been scaled in accordance with the minor, technical nature of the policy proposals. The Department is seeking the release of an exposure draft for consultation.

## Conclusion

1. The Department has assessed all issues against the identified policy objectives. For each problem the options identified were assessed for their contribution and impact on achieving the desired outcomes.

|  | Problems | |
| --- | --- | --- |
| Policy Objectives | 1 | 2 |
| Clarify and update statutory provisions to give effect to the intended purpose of the Act and its provisions and keep the regulatory system up to date and relevant. | Y | Y |
| Address regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation. |  | Y |
| Remove any unnecessary compliance costs and costs of doing business. | Y |  |

1. The Department recommends that the following amendments are made to the local government regulatory system. Collectively these amendments will improve the operational efficiency and effectiveness of local government:

|  | Title | Description |
| --- | --- | --- |
| 1 | Reduce local government filing requirements and improve document accessibility | Rationalise filing requirements to the Secretary for Local Government, Auditor-General and the Parliamentary Library. Replace with a requirement to publish on a council website in an accessible format. The following reporting documents would be effected:   * Council Long-Term Plan * Annual Plan * Annual Report and Summary * Rating resolutions * Dog control policy and practice report |
| 4 | Clarify the timing of taking office by a successful candidate following a by-election | Amend section 115 of the Local Electoral Act 2001 to provide that a successful candidate in a by-election comes into office on the day after the day on which the official result of the election is declared by public notice. |

## Implementation plan

1. A Cabinet paper is being prepared for early 2016 seeking approval to provide the Parliamentary Counsel Office with drafting instructions. The proposed amendments will require changes to Local Government Act 2002, Local Electoral Act 2001, Local Government (Rating) Act 2002, Dog Control Act 1996.
2. All the proposed amendments will be given effect by local authorities. Guidance will be prepared by the Department and provided to all local authorities on implementing the changes. This advice will be provided in advance of the commencement of the amendments. Guidance will raise awareness of the changes and assist with the interpretation of the changes.
3. The two proposal considered here will result in some changes to council processes. Any costs associated will be minor and are likely to be offset by the efficiency savings from the changes.
4. Where the amendments include changes for the public, advice to local authorities will include additional information that local authorities can incorporate into public communications. Support will be provided to Local Government New Zealand and the Society of Local Government Managers in advising their members accordingly. All guidance will be made publicly available on the Department’s website.

## Monitoring, evaluation and review

1. The Department will seek the support of Local Government New Zealand and the Society of Local Government Managers to provide feedback on behalf of their members on the effectiveness of the changes and the process undertaken. The information collected will be used to inform the decision to undertake another regulatory systems omnibus bill.
2. Separate monitoring and evaluating of the implementation of the proposals will not be undertaken because of the minor nature of the proposals.

## Appendix A: Complete list of proposed amendments

|  |  |  |  |
| --- | --- | --- | --- |
| # | Title | Description | In RIS |
| 1 | Require digital public notices | The current public notice definition restricts notices to newspapers. There is no ability to substitute with a notice on an authority's website. The proposal is to require public notices to be placed in a prominent place on a councils website. | **-** |
| 2 | Standardise the meaning of "working day" | The Local Government Act 2002 and Local Government and Official Information and Meetings Act 1987 contain different definitions of a working day. This impacts the length of time over the December-January holiday period for processing requests for service. | **-** |
| 3 | Clarify the public notification requirements for the creation of a pedestrian mall | Correct an error in the LGA74 where section 336(9) LGA74 refers to a public notice required by section 83(1)(3) of the LGA02, that section no longer refers to a public notice. Require the rights of appeal to be noted in the statement of proposal and summary of information if one is provided. | **-** |
| 4 | Clarify the organisations permitted to verify disability Assist Dog | The legal definition of "Disability Assist Dog" includes a list of the organisations which are authorised to certify a dog as such. Legislative change is required each time an organisation is added to or removed from the list. It proposed to allow for organisations to be added or removed without legislative change. | **-** |
| 5 | Clarify war veterans' eligibility for rates rebates | Remove ambiguity by amending the Rates Rebate Act 1973 to refer instead to any allowances, particular entitlements paid by Veterans' Affairs. | **-** |
| 6 | Remove the requirement for a statement on rates limits in council financial strategies | Remove the requirement to include a statement of a local authority’s limit on rates. This statement is unnecessary we propose amending sections 93C and 101A of the Local Government Act 2002 to remove the requirement for the inclusion of a statement on the quantified limit on rates in a council long-term plan and consultation documents. | **-** |
| 7 | Reduce local government filing requirements and improve document accessibility | Rationalise filing requirements to the Secretary of Local Government, Auditor-General and the Parliamentary Library. Replace with a requirement to publish on a council website in an accessible format. The following reporting documents would be effected:   * Council Long-Term Plan * Annual Plan * Annual Report and Summary * Rating resolutions * Dog control policy and practice report | **🗸** |
| 8 | Align delegation and sub-delegation powers | Currently the LGA reads as though the power to sub-delegate is broader than the power to delegate. It is proposed to limit the sub-delegation power so that it aligns with the limits on the delegation power. | **-** |
| 9 | Clarify the meaning of extraordinary meetings | Clarify what an “extraordinary meeting” is in the Local Government Act 2002 to ensure they are used appropriately. It is proposed to distinguish the concepts within the LGA02 or defining the term. | **-** |
| 10 | Correct a mismatched offence for advertising during reorganisation referendum period) | The offence in section 233 of the Local Government Act 2002 related to clause 58 Schedule 3 as it was prior to the enactment of the Local Government Act 2002 Amendment Act 2012. The equivalent clause in Schedule 3 is now clause 32 of Schedule 3. Realign this cross reference. | **-** |
| 11 | Create a mandate to facilitate voter participation in local elections | The inclusion of an explicit legislative mandate for local authorities to facilitate participation in local elections. | **-** |
| 12 | Clarify the timing of taking office by a successful candidate following a by-election | Amend section 115 of the Local Electoral Act 2001 to provide that a successful candidate in a by-election comes into office on the day after the day on which the official result of the election is declared by public notice. | **🗸** |

1. New Zealand Productivity Commission, Regulatory institutions and practices, June 2014, p28 [↑](#footnote-ref-1)
2. Local Electoral Act 2001, s120(1)(b). [↑](#footnote-ref-2)