

# **Local Government Official Information and Meetings Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The broad policy and purpose of the Bill is to provide clarity and certainty for local authorities on provisions of the Local Government Official Information and Meetings Act 1987 (the **principal Act**).

The policy proposals include—

- changes to improve natural hazard information provided in land information memoranda (**LIMs**); and
- aligning the withholding and certification processes with the Official Information Act 1982.

### **Natural hazard disclosure in land information memoranda**

LIMs under the principal Act are the main source of property information for the public and are a key tool for communicating natural hazard information to buyers so they can make informed decisions.

The provision of better natural hazard information (including about the impacts of climate change) in LIMs is an essential step to help property buyers understand natural hazard risk and make informed decisions when deciding whether to purchase a property. Improving natural hazard information in LIMs is a key action under New Zealand's first National Adaptation Plan.

However, there are challenges with how LIMs currently provide natural hazard information. LIMs may lack key natural hazard content, they are not effective at communicating natural hazard information, and legal liability issues can inhibit full disclosure of natural hazard information by local authorities.

This Bill amends the principal Act to introduce—

- clearer requirements to provide natural hazard information in a LIM (including the impacts of climate change):
- a statutory responsibility for regional councils to provide natural hazard information (including about the impacts of climate change) and support to territorial authorities:
- a specific purpose for providing natural hazard information:
- provisions to develop regulations for providing natural hazard information in LIMs:
- limitation of legal liability for local authorities when disclosing natural hazard information in good faith.

These amendments are aimed at achieving the key objectives of—

- ensuring that LIMs provide natural hazard information to property buyers that is clear, concise, nationally consistent in its presentation, and easily understood:
- providing certainty for local authorities about sharing natural hazard information in LIMs and reducing exposure to legal liability.

The proposed limitation of local authority liability will incentivise greater sharing of natural hazard information, while preserving the ability to bring legal action against local authorities where natural hazard information is known but has not been provided. This will provide local authorities with a similar level of protection to that they currently have when sharing other official information under the principal Act. Affected parties may still bring complaints to the Ombudsman and apply for judicial review.

The new statutory responsibility for regional councils will ensure that regionally held natural hazard information is included in the LIM. Regional councils often hold significant natural hazard information and have access to technical expertise. This new responsibility will formalise existing information sharing between regional councils and territorial authorities. Territorial authorities will retain the sole responsibility for processing LIM applications.

### **Aligning the withholding and certification processes with the Official Information Act 1982**

Like the Official Information Act 1982 (the **OIA**), the principal Act enables official information held by local authorities to be available for or protected from public release. Unlike the OIA, the principal Act does not provide conclusive grounds for withholding information—

- that would be likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
- that is entrusted to the Government of New Zealand from another Government or international organisation.

The principal Act also does not allow the Prime Minister to certify that certain information should not be released if it would be likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand.

The lack of these conclusive grounds for withholding information may inhibit the ability of local authorities to seek or receive advice on security risks and increase the risk of disclosure of information that could prejudice New Zealand's security or defence or the international relations of the Government of New Zealand.

The Bill amends the principal Act to align it with the equivalent provisions in the OIA and improve management of national security risks.

### **Departmental disclosure statement**

The Department of Internal Affairs is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=202>

### **Regulatory impact statement**

The Department of Internal Affairs produced regulatory impact statements on 2 November 2021 and 16 June 2022 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact statements can be found at—

- <https://www.dia.govt.nz/Resource-material-Regulatory-Impact-Statements-Index>
- <https://treasury.govt.nz/publications/informationreleases/ris>

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. *Part 1*, which makes amendments relating to land information memoranda, comes into force on a date set by Order in Council or 1 January 2025, whichever is earlier. *Part 2*, which makes amendments relating to official information, comes into force on the day after Royal assent.

*Clause 3* provides that the Bill amends the Local Government Official Information and Meetings Act 1987 (the **principal Act**).

## **Part 1**

### **Amendments relating to land information memoranda**

*Clause 4* amends the interpretation section of the principal Act.

*Clause 5* amends the purpose section of the principal Act to include a new purpose of providing for the issuing of land information memoranda (LIMs).

*Clause 6* inserts a new Part heading that relates to LIMs.

*Clause 7* amends section 44A of the principal Act. That section is about when a LIM needs to be issued and what information it needs to include. As amended, a LIM will need to include information about natural hazards in addition to information about other special features or characteristics of the land concerned.

*Clause 8* inserts *new sections 44B to 44D* as follows:

- *new section 44B(1)* sets out that the purpose of *new section 44B* is to ensure that LIMs contain understandable information about natural hazards and any impacts of climate change that exacerbate natural hazards in relation to land:
- *new section 44B* sets out the information about these issues that a territorial authority must include in a LIM. A LIM must include information, to the extent that it is known to the authority, about natural hazards and any relevant impacts of climate change. This must include information about hazards and impacts that currently affect the land concerned, potential hazards and impacts (if the authority is satisfied that there is a reasonable possibility that they may affect the land concerned), and the cumulative or combined effects on the land concerned of those hazards and impacts. Regulations may require that additional information be included to make the information in the LIM more understandable, or require that the information be summarised and presented in a certain way:
- *new section 44C* provides for a new obligation for a regional council to share information, to the extent that it is known to the council, about natural hazards and any relevant impacts of climate change with a territorial authority within or partly within its region. This must include information about hazards and impacts that currently affect land in the region, potential hazards and impacts (if the council is satisfied that there is a reasonable possibility that they may affect land in the region), and the cumulative or combined effects on land in the region of those hazards and impacts. Regulations may require that additional information be included to make the information provided to the territorial authority more understandable, or require that the information be summarised and presented in a certain way:
- *new section 44D* provides that territorial authorities and regional councils are not liable in civil or criminal proceedings for making information available in good faith about a natural hazard or any relevant impacts of climate change either in a LIM (in the case of a territorial authority) or to a territorial authority (in the case of a regional council).

*Clause 9* amends section 55 of the principal Act to provide that the Minister may only recommend that regulations be made for the purposes of *new Part 6A* if the Minister has consulted the persons or organisations that the Minister considers appropriate to consult.

*Clause 10* removes the definition of territorial authorities from Schedule 1 of the principal Act because a territorial authority is now defined in section 2(1) of the principal Act.

## Part 2

### Amendments relating to official information

The effect of the amendments in *clauses 11 and 12* is to align the principal Act with equivalent provisions in the Official Information Act 1982.

*Clause 11* creates new conclusive reasons for a local authority to withhold official information. An authority may withhold the information if releasing it would be likely to prejudice New Zealand's security, defence, or international relations, or the entrusting of information to the New Zealand Government by another Government or an international organisation on a confidential basis.

*Clause 12* replaces section 31 of the principal Act. Under section 31, an Ombudsman can recommend that information be made available if they have investigated a decision not to release it. However, they may not make that recommendation if the Attorney-General certifies that making the information available would be likely to prejudice the prevention, investigation, or detection of offences. *New section 31* provides that the Ombudsman may also not make a recommendation if the Prime Minister certifies that making the information available would be likely to prejudice New Zealand's security, defence, or international relations.



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**Part 2**

**Amendments relating to official information**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Local Government Official Information and Meetings Amendment Act **2022**.

**2 Commencement**

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(1) **Part 1** comes into force as follows:

(a) on a date set by Order in Council; but

(b) on **1 January 2025**, if it has not come into force by then.

(2) **Part 2** comes into force on the day after Royal assent.

(3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 10

**3 Principal Act**

This Act amends the Local Government Official Information and Meetings Act 1987.

**Part 1**

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**Amendments relating to land information memoranda**

**4 Section 2 amended (Interpretation)**

In section 2(1), insert in their appropriate alphabetical order:

**climate change** has the meaning given in section 2(1) of the Resource Management Act 1991 20

**natural hazard** has the meaning given in section 2(1) of the Resource Management Act 1991

**regional council** has the meaning given in section 5(1) of the Local Government Act 2002

**regulations** means regulations made under section 55 25

**territorial authority** has the meaning given in section 5(1) of the Local Government Act 2002



**5 Section 4 amended (Purposes)**

After section 4(c), insert:

- (d) to provide for the issue of land information memoranda.

**6 Cross-heading above section 44A replaced**

Replace the cross-heading above section 44A with:

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**Part 6A**  
**Land information memoranda**

**7 Section 44A amended (Land information memorandum)**

Replace section 44A(2)(a) with:

- (a) the information about natural hazards that is required by **section 44B:**
- (ab) information about other special features or characteristics of the land concerned, including information about the likely presence of hazardous contaminants, that—
  - (i) is known to the territorial authority; but
  - (ii) is not apparent from a district plan under the Resource Management Act 1991:

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**8 New sections 44B to 44D inserted**

After section 44A, insert:

**44B Natural hazard information to be included in land information memoranda**

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(1) The purpose of this section is to ensure that land information memoranda contain understandable information about the following in relation to land:

- (a) natural hazards;
- (b) impacts of climate change that exacerbate natural hazards.

(2) A land information memorandum must include—

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- (a) the following information, to the extent that it is known to the territorial authority:
  - (i) information about each hazard or impact that affects the land concerned;
  - (ii) information about each potential hazard or impact, to the extent that the authority is satisfied that there is a reasonable possibility that the hazard or impact may affect the land concerned (whether now or in the future);
  - (iii) information about the cumulative or combined effects of those hazards or impacts on the land concerned; and

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(b)	any further information required by the regulations to make the information provided under <b>paragraph (a)</b> more understandable.	
(3)	The information must be summarised and presented in the land information memorandum in the form required by the regulations (if any).	
<b>44C</b>	<b>Regional council must provide territorial authority with natural hazard information</b>	5
(1)	A regional council must, as soon as is reasonably practicable in the circumstances, provide to each territorial authority within or partly within its region—	
(a)	the following information, to the extent that it is known to the council, about natural hazards and impacts of climate change that exacerbate natural hazards:	10
(i)	information about each hazard or impact that affects land in the region:	
(ii)	information about each potential hazard or impact, to the extent that the council is satisfied that there is a reasonable possibility that the hazard or impact may affect land in the region (whether now or in the future):	15
(iii)	information about the cumulative or combined effects of those hazards or impacts on land in the region; and	
(b)	any further information required by the regulations to make the information provided under <b>paragraph (a)</b> more understandable.	20
(2)	The information must be summarised and presented in the form required by the regulations (if any).	
<b>44D</b>	<b>Territorial authority and regional council protected against certain actions when providing information in good faith</b>	25
	A territorial authority or regional council is not liable in civil or criminal proceedings for making available in good faith,—	
(a)	in the case of a territorial authority, information in a land information memorandum under <b>section 44A(2)(a)</b> ; or	
(b)	in the case of a regional council, information to a territorial authority under <b>section 44C</b> .	30
<b>9</b>	<b>Section 55 amended (Regulations)</b>	
	After section 55(1), insert:	
(1A)	The Minister must not recommend that regulations be made for the purposes of <b>Part 6A</b> unless they have consulted the persons or organisations that the Minister considers appropriate to consult.	35

**10 Schedule 1 amended**

In Schedule 1, Part 1, item relating to territorial authorities, delete “within the meaning of the Local Government Act 2002”.

**Part 2**

**Amendments relating to official information**

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**11 Section 6 amended (Conclusive reasons for withholding official information)**

(1) In section 6, renumber paragraphs (a) and (b) as paragraphs (c) and (d).

(2) Before section 6(c), insert:

(a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or

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(b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by—

(i) the Government of another country or an agency of that Government; or

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(ii) any international organisation (as defined in section 2(1) of the Official Information Act 1982); or

(3) In section 6, replace the compare note with:

Compare: 1982 No 156 s 6(a)–(d)

**12 Section 31 replaced (Disclosure of certain information not to be recommended)**

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Replace section 31 with:

**31 Disclosure of certain information not to be recommended**

(1) An Ombudsman must not recommend that information be made available if—

(a) the Prime Minister certifies that making the information available would be likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or

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(b) the Attorney-General certifies that making the information available would be likely to prejudice the prevention, investigation, or detection of offences.

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(2) However, the Ombudsman may recommend that the appropriate local authority give further consideration to making the information available.

Compare: 1982 No 156 s 31