

Local Government Act 2002 Amendment Bill

Government Bill

As reported from the committee of the whole House

This bill was formerly part of the Local Government Law Reform Bill. This bill was reported from the Local Government and Environment Committee with unanimous and majority amendments, but the majority amendments were not agreed to by the House. The committee of the whole House has further amended the bill and divided it as follows:

- The Dog Control Amendment Bill, comprising Part 1, and Schedule 1AA
- The Litter Amendment Bill, comprising Part 2
- The Local Electoral Amendment Bill, comprising Part 3
- This bill, comprising Part 4
- The Local Government Act 1974 Amendment Bill, comprising Part 5
- The Local Government (Rating) Amendment Bill, comprising Part 6, and Schedule 1
- The Rates Rebate Amendment Bill, comprising Part 7
- The Land Transport Amendment Bill (No 2), comprising Part 8.

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,	Text struck out unanimously
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New (unanimous)

Subject to this Act,	Text inserted unanimously
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<i>(Subject to this Act,)</i>	Words struck out unanimously
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<u>Subject to this Act,</u>	Words inserted unanimously
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As reported from the committee of the whole House

Struck out

Subject to this Act,	Text struck out
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New

Subject to this Act,	Text inserted
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<u>Subject to this Act,</u>	Words inserted
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Hon Mark Burton

Local Government Act 2002 Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Local Government Act 2002 Amendment Act **2006**.
- 2 Commencement**
- (1) **Section 29** comes into force on 14 October 2007.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.
- 25 Principal Act amended**
This **Part** amends the Local Government Act 2002.

26 Interpretation

- (1) Section 5(1) is amended by inserting the following definition *(after the definition of **annual plan**)* in its appropriate alphabetical order:

“**bylaw** means a bylaw made by a local authority under any enactment”.

- (2) Section 5(1) is amended by repealing the definition of **community facilities** and substituting the following definition:

“**community facilities** has the meaning set out in section 197”.

Struck out (unanimous)

27 Exempted organisations

- (1) Section 7 is amended by repealing subsection (2) and substituting the following subsection:

“(2) The Minister may make a recommendation only if, in the Minister’s opinion, the organisation’s accountability under the enactment under which it is established, or any other enactment, is of a similar nature and effect to that required of a council-controlled organisation under this Act.”

New (unanimous)

27 Exempted organisations

- (1) Section 7(1) is amended by omitting “established under an enactment,”.

- (2) Section 7 is amended by repealing subsection (2) and substituting the following subsection:

“(2) The Minister may make a recommendation only if—
“(a) the organisation is subject to monitoring and reporting requirements under an enactment; and
“(b) in the Minister’s opinion, the organisation’s accountability under that enactment is of a similar nature and effect to that required of a council-controlled organisation under this Act.”

28 Status and powers

Section 12(6) is amended by adding “; or” and also by adding the following paragraphs:

- “(d) prevent a local authority from making a donation (whether of money, resources, or otherwise) to another local authority or to a person or organisation outside its district or region or outside New Zealand—
- “(i) if the local authority considers, on reasonable grounds, that the donation will benefit its district or region, or the communities within its district or region; or
- “(ii) if the local authority considers, on reasonable grounds, that a benefit will be conferred on the local government sector as a whole; or
- “(iii) for emergency relief; or

New

- “(e) prevent a local authority from making a donation (whether of money, resources, or otherwise) to a local government body outside New Zealand to enable it to share its experience and expertise with that body.”

29 Local governance statements

Section 40(1) is amended by inserting the following paragraph after paragraph (b):

- “(ba) the bylaws of the local authority, including for each bylaw, its title, a general description of it, when it was made, and, if applicable, the date of its last review under **section 158 or (section) 159**; and”.

New (unanimous)**29A Statements of intent for council-controlled organisations**

Section 64 is amended by adding the following subsection:

- “(6) Despite this section, an organisation that becomes a council-controlled organisation not more than 6 months before the end of a financial year is not required to prepare a statement of intent for that financial year.”

30 New section 86 substituted

Section 86 is repealed and the following section substituted:

“86 Use of special consultative procedure in relation to making, amending, or revoking bylaws

“(1) This section applies to the following:

“(a) making a bylaw to which **section 156** applies:

“(b) amending a bylaw to which **section 156** applies (other than under **subsection (2)** of that section):

“(c) revoking a bylaw to which **section 156** applies.

“(2) Where the special consultative procedure is used in relation to an activity described in **subsection (1)**, the statement of proposal referred to in section 83(1)(a) must include,—

“(a) as the case may be,—

“(i) a draft of the bylaw as proposed to be made or amended; or

“(ii) a statement that the bylaw is to be revoked; and

“(b) the reasons for the proposal; and

“(c) a report on any relevant determinations by the local authority under section 155.”

New (unanimous)**30A Certain decisions to be taken only if provided for in long-term council community plan**

Section 97(2)(a) is amended by omitting “the council’s” and substituting “its”.

31 Policy on partnerships with private sector

(1) Section 107(2)(a)(ii) is amended by omitting “council organisations” and substituting “council-controlled organisations”.

(2) Section 107(2)(b) is amended by inserting “by,” after “or services to,”.

32 Prohibition on borrowing in foreign currency

Section 113 is amended by adding the following subsection as subsection (2):

“(2) Subsection (1) does not apply to an incidental arrangement in relation to an investment in currency other than New Zealand currency.”

Struck out (unanimous)**33 Restrictions on disposal of parks**

- (1) Section 138(1) is amended by omitting “subpart” and substituting “section”.
- (2) Section 138(2) is amended by omitting “or agrees to sell the park or part of it” and substituting “or disposes of, or agrees to sell or dispose of, the park or part of it”.

New (unanimous)**33 New section 138 substituted**

Section 138 is repealed and the following section substituted:

“138 Restriction on disposal of parks (by sale or otherwise)

- “(1) A local authority proposing to sell or otherwise dispose of a park or part of a park must consult on the proposal before it sells or disposes of, or agrees to sell or dispose of, the park or part of the park.
- “(2) In this section,—
 - “**dispose of**, in relation to a park, includes the granting of a lease for more than 6 months that has the effect of excluding or substantially interfering with the public’s access to the park
 - “**park**—
 - “(a) means land acquired or used principally for community, recreational, environmental, cultural, or spiritual purposes; but
 - “(b) does not include land that is held as a reserve, or part of a reserve, under the Reserves Act 1977.”

34 New sections 139 and 139A substituted

Section 139 is repealed and the following sections are substituted:

“139 Protection of regional parks

- “(1) In this section and **section 139A**, **regional park**—
 - “(a) means land—
 - “(i) owned by a regional council; and
 - “(ii) acquired or used principally for community, recreational, environmental, cultural, or spiritual purposes; and

- “(b) includes land within the meaning of **paragraph (a)** that is—
- “(i) reserve within the meaning of section 2(1) of the Reserves Act 1977; or
 - “(ii) otherwise held or administered under the Reserves Act 1977 or any earlier corresponding enactment.
- “(2) For the purpose of enabling a regional council to protect a regional park or part of a regional park in its region, the Governor-General may, by Order in Council made on the recommendation of the Minister, declare the park or the part of the park to be protected in perpetuity from disposition (by sale or otherwise).
- “(3) The Minister must not make a recommendation unless the regional council has requested the Minister to do so.
- “(4) An Order in Council does not prevent a regional council from disposing of part of the regional park to which the order applies—
- “(a) to make a minor boundary adjustment to it;
 - “(b) for the more efficient administration of it.

Struck out

- “(5) However, **subsection (4)** applies only if the retention of the land would not materially enhance the conservation or recreational values of the park.

New

- “(5) However, **subsection (4)** applies only if—
- “(a) the retention of the land would not materially enhance the conservation or recreational value of the park; and
 - “(b) the regional council has used the special consultative procedure in the process of determining whether to dispose of the land.
- “(6) Any land within the meaning of **subsection (1)(b)** that is included in an Order in Council—
- “(a) retains its classification under the Reserves Act 1977; and

- “(b) remains subject to that Act; and
- “(c) if the land is to be sold or disposed of under **subsection (4) of this section**, must first be dealt with under sections 24 and 25 of that Act.

- “(7) An Order in Council must specify the regional park or the part of the regional park to which the order applies—
 - “(a) by name and legal description, if it is practicable to do so; or
 - “(b) by name and a detailed description of the location of the land, in any other case.

“139A Further provision in relation to regional parks

- “(1) An Order in Council made under **section 139** may be varied to include a reference to any land included in the regional park after the Order is made.
- “(2) The provisions of **section 139** apply, with all necessary modifications, to an Order in Council varied under **subsection (1)**.”

35 General provisions applying to bylaws

- (1) The heading to section 151 is amended by adding “**made under this Act**”.
- (2) Section 151 is amended by inserting the following subsection before subsection (1):
 - “(1AA) This section applies to a bylaw only if it is made under this Act.”

36 Determination whether bylaw is appropriate

- (1) The heading to section 155 is amended by inserting “**made under this Act**” after “**bylaw**”.
- (2) Section 155 (*of the principal Act*) is amended by inserting the following subsection before subsection (1):
 - “(1AA) This section applies to a bylaw only if it is made under this Act.”

37 New section 156 substituted

Section 156 is repealed and the following section substituted:

“156 Special consultative procedure must be used in making, amending, or revoking bylaw made under this Act

- “(1) A local authority must use the special consultative procedure (as modified by section 86) in—

- “(a) making a bylaw under this Act:
 - “(b) amending a bylaw made under this Act:
 - “(c) revoking a bylaw made under this Act.
- “(2) Despite **subsection (1)(b)**, a local authority may, by resolution publicly notified,—

Struck out (unanimous)

- “(a) make editorial changes to a bylaw that do not affect its general intent and purpose:

New (unanimous)

- “(a) make minor changes to, or correct errors in, a bylaw, but only if the changes or corrections do not affect—
- “(i) an existing right, interest, title, immunity, or duty of any person to whom the bylaw applies; or
 - “(ii) an existing status or capacity of any person to whom the bylaw applies:

- “(b) convert an imperial weight or measure specified in a bylaw into its metric equivalent or near metric equivalent.”

38 Heading above section 158 amended

The heading above section 158 is amended by adding “*made under this Act or the Local Government Act 1974*”.

39 New sections 158 to 160A substituted

Sections 158 to 160 are repealed and the following sections substituted:

“158 Review of bylaws made under this Act or the Local Government Act 1974

- “(1) A local authority must review a bylaw made by it under this Act (other than a bylaw deemed to be made under this Act by section 293) no later than 5 years after the date on which the bylaw was made.
- “(2) A local authority must review a bylaw made by it under the Local Government Act 1974 (other than a bylaw deemed to be made under this Act by section 293)—

- “(a) no later than *(5 years after)* 1 July 2008, if the bylaw was made before 1 July 2003; and
- “(b) no later than 5 years after the bylaw was made, if the bylaw was made after 1 July 2003.

“159 Further reviews of bylaws every 10 years

A local authority must review a bylaw made by it under this Act or the Local Government Act 1974 no later than 10 years after it was last reviewed as required by **section 158** or this section.

“160 Procedure for and nature of review

- “(1) A local authority must review a bylaw to which **section 158 or (section) 159** applies by making the determinations required by section 155.
- “(2) For the purposes of **subsection (1)**, section 155 applies with all necessary modifications.
- “(3) If, after the review, the local authority considers that the bylaw—
 - “(a) should be amended, revoked, or revoked and replaced, it must act under **section 156**;
 - “(b) should continue without amendment, it must use the special consultative procedure.
- “(4) For the purposes of **subsection (3)(b)**, the statement of proposal referred to in section 83(1)(a) must include—
 - “(a) a copy of the bylaw to be continued; and
 - “(b) the reasons for the proposal; and
 - “(c) a report of any relevant determinations by the local authority under section 155.
- “(5) This section does not apply to any bylaw to which **section 10AA of the Dog Control Act 1996** applies.

**“160A Bylaw not reviewed within specified time frame
revoked**

A bylaw that is not reviewed as required under **section 158 or (section) 159**, if not earlier revoked by the local authority concerned, is revoked on the date that is 2 years after the last date on which the bylaw should have been reviewed under that section.”

40 Powers of arrest, search, and seizure in relation to bylaw prohibiting liquor in public place

Section 169(1) is amended by inserting the following definition (*before the definition of liquor*) in its appropriate alphabetical order:

“**bylaw** means a bylaw made under section 147(2)”.

41 Power to restrict water supply

Section 193(1) is amended by repealing paragraph (ba) and substituting the following paragraph:

“(ba) fails to comply with any bylaw of a local authority that relates—

“(i) to water, water pipes, waterworks, water races, or water supply; and

“(ii) to the person’s land or building; or”.

42 Interpretation

(1) Section 197 is amended by omitting “subpart,” and substituting “subpart and Schedule 13,”.

(2) Section 197 is amended by inserting the following definition (*after the definition of allotment*) in its appropriate alphabetical order:

“**community facilities** means reserves, network infrastructure, or community infrastructure for which development contributions may be required in accordance with section 199”.

43 Power to require contributions for developments

(1) Section 198(1) is amended by omitting “before” and substituting “when”.

New (unanimous)

(2) Section 198(1)(b) is amended by omitting “authority); and” and substituting “authority):”.

(3) Section 198 is amended by repealing subsection (3) and substituting the following subsections:

“(3) A requirement for a development contribution under subsection (1)(a) or (1)(b) is not—

New (unanimous)

- “(a) a condition of a resource consent that gives rise to any right of objection or appeal; or
- “(b) as the case may be, a matter that gives rise to any right to apply to the chief executive for a determination under the Building Act 2004.
- “(4) **Subsection (3)** is for the avoidance of doubt.
- “(5) In this section,—
- “**building consent authority** means a person whose name is entered in the register referred to in section 273(1)(a) of the Building Act 2004
- “**chief executive** has the meaning given to it in section 7 of the Building Act 2004.”

44 Damage to local authority works or property

Section 232(1) is amended by repealing paragraph (d) and substituting the following paragraphs:

- “(d) a drainage work; or
- “(e) anything forming part of, or connected with, any works or property not referred to in paragraphs (a) to (d).”

45 Offences punishable on summary conviction

Section 239 is amended by adding the following subsection as subsection (2):

- “(2) A District Court presided over by 2 or more Justices has jurisdiction in respect of any summary offence that is a breach of a bylaw made under section 147.”

46 Bylaws

Section 293 is amended by adding the following subsection:

- “(3) Every bylaw to which this section applies that is not revoked or that does not expire before 1 July 2008, is revoked on that date.”

47 Schedule 3 amended

- (1) Clause 10(1)(c) of Schedule 3 is amended by omitting “must”.

- (2) Clause 59 of Schedule 3 is amended by repealing subclause (2) and substituting the following subclause:
- “(2) In preparing a reorganisation scheme, the Commission may also provide for the constitution of any community under Schedule 6.”

48 Schedule 7 amended

- (1) Schedule 7 is amended by inserting the following clause before clause 32:

“32AA Meaning of officer

For the purposes of clauses 32, 32A, and 32B, **officer** means—

- “(a) a named person; or
“(b) the person who is for the time being the holder of a specified office.”
- (2) Clause 32B(1)(a) of Schedule 7 is amended by omitting “section” and substituting “clause”.

49 Schedule 10 amended

- (1) Clause 10(1)(c) of Schedule 10 is amended by repealing subparagraphs (ii) and (iii) and substituting the following subparagraph:
- “(ii) a statement as to whether a uniform annual general charge is to be included and, if so, a statement—
“(A) as to how the charge is to be calculated; and
“(B) of the local authority’s definition of a separately used or inhabited part of a rating unit, if the charge is to be calculated on this basis; and”.
- (2) Clause 10(1)(d) of Schedule 10 is amended by repealing subparagraph (iii) and substituting the following subparagraph:
- “(iii) for each category, a statement—
“(A) as to how liability for the targeted rate is to be calculated; and
“(B) of the local authority’s definition of a separately used or inhabited part of a rating unit, if the rate is to be calculated on this basis; and”.

- (3) Clause 13(c) of Schedule 10 is amended by repealing subparagraphs (ii) and (iii) and substituting the following subparagraph:
- “(ii) whether a uniform annual general charge is to be included and, if so,—
- “(A) how the charge is to be calculated; and
- “(B) the local authority’s definition of a separately used or inhabited part of a rating unit, if the charge is to be calculated on this basis; and”.
- (4) Clause 13(d) of Schedule 10 is amended by repealing subparagraph (iii) and substituting the following subparagraph:
- “(iii) for each category,—
- “(A) how liability for the targeted rate is to be calculated; and
- “(B) the local authority’s definition of a separately used or inhabited part of a rating unit, if the rate is to be calculated on this basis; and”.

Consequential amendment to Local Government Act 1974

50 Consequential amendment to Local Government Act 1974

The *(Local Government Act 1974 is amended by inserting the) following section (before section 684) is inserted before section 684 of the Local Government Act 1974:*

“684AA Certain provisions of Local Government Act 2002 to apply to bylaws made under this Act

- “(1) Despite anything to the contrary in the Local Government Act 2002, sections 150, 151, 155, and **156 of that Act** apply, with all necessary modifications, to any bylaw made under this Act.
- “(2) This section does not limit any other provisions of that Act that apply to a bylaw made under this Act.”

New (unanimous)*Transitional provision***50A Transitional provision for long-term council community plans for period beginning on 1 July 2006**

Any amendments made by **this Part** that have the effect of requiring an amendment to a long-term council community plan (to ensure that it complies with the requirements of the principal Act, as amended by **this Part**)—

- (a) do not apply to a long-term council community plan to which section 280 of the principal Act applies, whether it is adopted before or after the commencement of **this Part**; but
- (b) do apply to any amendment made to a long-term council community plan to which section 280 of the principal Act applies that is adopted after the commencement of **this Part**.

Legislative history

21 June 2006

Divided from Local Government Law Reform Bill
(Bill 32–3) as Bill 32–4D