

LOCAL GOVERNMENT AMENDMENT BILL (NO. 4)

EXPLANATORY NOTE

THIS Bill relates to the implementation of local government reform in New Zealand.

Clauses 2 to 10 provide for the appointment of transitional committees and define their powers. Every transitional committee, unless sooner discharged, shall be deemed to be discharged on 14 October 1989.

Clause 11 provides for the appointment of senior executives for a local authority which is not yet formed, but which is contemplated by a draft scheme. The appointments are to be made by the transitional committee.

The local authorities are liable for the obligations of the new local authority (not yet formed) if the authority is not formed, or, if formed, does not ratify the appointment.

If the appointment is not ratified by 31 March 1990, the appointment is cancelled and the maximum compensation payable to the person appointed is 12 months' salary or such lesser amount as is specified in the person's conditions of employment.

If the new local authority is formed on a basis substantially different from that set out in the draft scheme, the appointment can be cancelled and the maximum compensation payable to the person is 12 months' salary or such lesser amount as is specified in the person's conditions of employment.

The Local Authorities (Employment Protection) Act 1963 and the Higher Salaries Commission Act 1977 will not apply to persons appointed pursuant to this clause.

Clause 12 relates to employment contracts, including consultancy contracts, entered into by local authorities in the period beginning on 18 November 1988 and ending with the date of the 1989 triennial local government elections.

The purpose of the clause is to restrict the ability of local authorities to enter into long term contracts with staff when both the local authority and the staff concerned are aware that those staff may not be employed in similar positions in the new local authorities. There is some doubt at common law about the validity of such a contract but it is considered preferable to define the conditions under which such contracts may be entered into.

The particular mischief of such contracts is that local authorities going out of existence as a result of the reorganisation of local government might use the

contracts to burden their successors with expensive compensation payments to staff whom the successor local authorities do not wish to retain in comparable positions, or might leave the successor authorities with significant liability for damages for breach of contract.

Subclause (1) provides that contracts of employment entered into by local authorities must not extend beyond 31 March 1990, or must be reviewable and capable of cancellation without penalty before that date.

Subclause (2) provides that, subject to certain exceptions, *subclause (1)* applies to all contracts entered into on or after 18 November 1988.

Subclause (3) makes it clear that no person loses any rights or entitlements under the Local Authorities (Employment Protection) Act 1963 because of the provisions of this clause. However, it will not be possible to enter into agreements under section 9 of that Act. Such an agreement may restrict (for a period not exceeding 5 years) the power of a local authority to remove any officer or servant of the local authority from office.

Subclause (4) empowers the Local Government Commission to exempt a local authority from the requirements of *subclause (1)* where it is satisfied—

- (a) That the exemption is necessary to ensure the proper administration of the local authority; and
- (b) That there will not be significant disadvantage to any other local authority; and
- (c) That, in the particular circumstances of the case, it is reasonable to do so.

By virtue of *subclause (5)* exemptions must be granted before contracts are entered into. A local authority cannot enter into a contract and then later seek an exemption.

Subclause (6) provides that contracts entered into after the date of the 1989 triennial general election for local authorities (i.e., by the new local authorities) are not subject to *subclause (1)*.
