

Local Government (Elected Member Remuneration and Trading Enterprises) Amendment Bill

Government Bill

As reported from the Local Government and
Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Local Government (Elected Member Remuneration and Trading Enterprises) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Background

Local authorities currently determine remuneration for their elected members within a range of maximum and minimum levels set by the Minister of Local Government. The Department of Internal Affairs (the department) has identified problems with this regime, including the potential for the remuneration process to be politicised, and the ‘perverse incentive’ for elected members to meet unnecessarily. Additionally, the Controller and Auditor-General has made findings over the last decade that consistently reflect the need to increase the transparency and accountability of local authority trading enterprises (LATEs) to their communities. The overall objective of this bill is to deal with these matters.

We have considered the bill within the broader context of the review of the Local Government Act 1974, which is currently in its early stages. Various sectors throughout New Zealand are considering

proposed changes (outlined in the Local Government Act Consultation Document) to the future purpose and direction of local government. In light of this, we have endeavoured as far as possible to enhance the provisions in the bill while having regard to the potential implications for the new local government legislation.

Local government elected member remuneration

Rules for the recovery of expenses incurred by members

The Higher Salaries Commission (the Commission) has expertise in determining remuneration for members of Parliament, the judiciary and specified statutory officers. In addition to the proposed change that the Commission be responsible for making remuneration determinations for local government elected members, we support by majority the suggestion that the Commission also prescribe rules for reimbursing expenses incurred by elected members. We recommend the inclusion of new paragraph (ea) in new section 101ZZF(2) in clause 4 to reflect this.

Discretion to grant honoraria to elected members on leaving office

We considered whether local government members should receive honoraria for a specified period upon leaving office as part of their overall remuneration package. While some submissions opposed this, others considered an ex gratia payment should be paid on the basis that members of Parliament receive payment for a period of three months after leaving office. This applies only to members of Parliament who choose not to stand for re-election or are unsuccessful in being re-elected. Those who resign during their term are not entitled.

The majority of us consider the discretion to prescribe the circumstances in which local government elected members are entitled to receive an ex gratia payment, equivalent to a maximum of three months' salary, is within the scope of the Commission's proposed responsibility to make determinations. While the majority recommends the insertion of new section 101ZZF(2)(eb) in clause 4 to reflect this, there is no expectation that the Commission should or will provide for an ex gratia payment.

Submissions to commission

Consistent with section 21(1) of the Higher Salaries Commission Act 1977, we recommend that any interested persons or organisations be enabled to make a written submission to the Commission on any determinations to be made (new section 101ZZGA(1)). We also recommend that the Commission be given the discretion to invite oral submissions (new section 101ZZGA(2)). We believe both the payers and the receivers of remuneration determined by the Commission should be treated equally in the law regarding oral submissions. We are confident the Commission will fairly administer its powers in determining from whom it hears oral submissions.

Frequency of determinations

Section 19 of the Higher Salaries Commission Act 1977 requires, among other things, the Commission to review and issue a determination for all other specified entities at least every three years. We propose a new section (101ZZGB) be incorporated into clause 4 to reflect that provision, to minimise any future uncertainty regarding the interpretation of these separate pieces of legislation and to ensure consistency across legislation relating to the Commission's responsibility.

We do not support the suggestion from some submitters that determinations for local government member remuneration should be made annually. That could restrict the Commission's flexibility to make determinations and make appropriate adjustments. Since the bill also proposes that local authorities are to cover the Commission's costs in making determinations, such an amendment would not be in the best interests of local authorities or their communities.

Power to appeal against a determination

We do not support the suggestion that the bill empower local authorities or elected members to appeal against a determination. This power does not currently exist in respect of determinations made for members of Parliament.

Levy to cover Commission's costs

The bill proposes that local authorities are to pay for the Commission's costs in making determinations. This will eventually occur through the Minister imposing a levy on all local authorities but, in

the first instance, the Department of Labour (which is responsible for the Commission) will provide the Commission with the funding. The majority of us consider these costs are a component of the overall remuneration regime and should be borne by the communities concerned (ratepayers), not by the general taxpayer.

Opposition parties are concerned about the compliance costs of this special levy, noting other agencies for which the Commission makes determinations, are not charged. The Opposition believes the costs of making local government remuneration determinations should be met in the same way as other determinations, through Vote Higher Salaries Commission.

Formula for setting levy

The department has developed a single levy formula to be applied to all local authorities. The formula provides that half of the Commission's costs will be met through a flat fee charged to all local authorities, with remaining variable costs for each local authority to be calculated based on the number of its elected members, including community board members. We were advised that agreement has been reached on this proposal.

We propose that the new section 101ZZK in clause 4 also require the regulation to prescribe the following:

- the amount of the levy or the way it is calculated
- the local authorities liable to pay the levy
- that the levy may be calculated to include the Commission's costs from 1 July 2001, even though regulations that impose the levy are made after that date
- that the regulation may prescribe how the levy must be paid or collected.

We also recommend that a local authority must pay a levy required by regulation and that the levy be recoverable as a debt due to the Crown in any court of competent jurisdiction (new section 101ZZK(3) and (4)).

Specification of formula in bill versus regulation

The Department of Labour would prefer the formula to be specified in the bill rather than by regulation to ensure certainty and avoid any

prospect of a regulation being rejected by the Regulations Review Committee.

The Regulations Review Committee draws attention to a regulation only in certain circumstances. It is unlikely that a regulation will be disallowed if it is made in accordance with both the regulation-making powers in the bill and the appropriate Audit and Treasury guidelines for the setting of charges. Inclusion of the formula in the bill could create unnecessary difficulties and costs, given the formula may need to be amended in the future. Specification of the formula by way of regulation provides the Minister with flexibility to respond to changing circumstances over time.

The Act Party believes a full inquiry into the remuneration and expenses of all elected representatives (both local and national) is necessary.

Local Authority Trading Enterprises (LATEs)

The bill aims to increase the transparency and accountability of LATEs to their communities by enabling them to take into account non-commercial considerations, including social and environmental consequences (clause 7). The meaning of 'operating as a successful business' is broadened to clarify that a LATE is to exhibit a sense of social responsibility by considering the interests of the wider community and achieving any non-commercial objectives specified in its statement of corporate intent.

Exhibiting a sense of social responsibility

Some submitters support the proposed meaning because they consider it removes the implied paramount imperative for LATEs to make a profit and ensures social objectives are no longer subordinate to commercial objectives.

Other submitters consider LATEs should not be providers of certain services (such as water services) on the basis that these are necessities of life which should not be commercialised or monopolised.

‘Commercial and non-commercial’ versus ‘sustainability’ objectives

Submissions are divided on the achievement of ‘commercial and non-commercial’ objectives as an appropriate approach to ascertaining the extent LATEs operate as successful businesses. LATEs and local authorities that already report on environmental objectives supported this approach. Another submitter argued LATEs should take a more integrated approach by replacing ‘commercial and non-commercial objectives’ with ‘sustainability objectives’, which would also result in commercial opportunities. It was suggested LATEs should also adopt triple bottom line reporting to reflect their achievement of environmental and social objectives, and that the bill was an opportunity for LATEs to provide leadership in sustainable management to other businesses. The term ‘non-commercial’ would provide other companies with a reason not to include sustainability objectives.

Other submitters agreed the words ‘commercial and non-commercial’ be deleted but for different reasons. Some considered clause 7 provisions create confusion about whether ‘operating as a successful business’ means purely commercial, profit-oriented objectives. They argued these provisions also create a potential conflict of interest for the funding of both commercial and non-commercial objectives and will result in some loss of transparency and clarity as to how non-commercial objectives might be funded. Others supported the deletion of ‘commercial and non-commercial’ because the incorporation of these words implies the assumption that there are no LATEs that give consideration to environmental or social objectives, when in fact some do.

‘Environmental responsibility’ to be included in meaning of ‘successful business’

While the majority of us acknowledge the merits of triple bottom line reporting and the initiative of those LATEs that have adopted these mechanisms, we do not consider it appropriate to expect all LATEs to carry the responsibility of providing leadership to the rest of the business sector in sustainable management practices. However, we do consider the inclusion of a requirement to exhibit a sense of environmental responsibility to be broadly consistent with the

general intent of the bill, and we recommend that subsection (2)(c) in new section 594Q be amended to reflect this.

Definition and costings of ‘non-commercial’ objectives not to be included in bill

The majority of us consider shareholders are entitled to take a reduction in profits to pursue non-commercial objectives, provided that information is available to inform them of the trade-offs they are making. However, we do not consider the bill should explicitly require transparent accountability arrangements to be put in place to inform the public of the cost of non-commercial objectives. To do so would require a complete definition of the range of activities a LATE could undertake to achieve non-commercial objectives. It is unlikely that an all-encompassing definition could be produced, and any attempt to do so risks restricting the activities a LATE could consider undertaking in its pursuit to fulfil its non-commercial objectives, which would be inconsistent with the intent of the bill.

Discrepancy in the application of the Statement of Corporate Intent (SCI) regime

The SCI regime applies to port companies and energy companies as well as LATEs. However, the way in which the SCI regime applies to port and energy companies differs from how it applies to LATEs in terms of reporting requirements.

We considered whether the bill should address this discrepancy by including a similar provision to section 7 of the State-Owned Enterprises Act 1986, as suggested by several submitters. This would require shareholders to enter into a written agreement with their LATEs to pay compensation (in part or whole) for any financial loss incurred by their LATEs when supplying non-commercial services specified by the shareholders.

The majority of us consider such a provision unnecessary because current provisions in the Local Government Act 1974 are sufficient. For example, section 594T(i) already requires that an SCI shall specify ‘any activities for which the directorate seeks compensation from any local authority (whether or not the local authority has agreed to provide such compensation).’

Local authority sub-entities not covered by the bill

We are aware that, while the bill deals with SCIs for LATEs, a number of other sub-entities of local authorities exist that the bill does not cover. We understand this is to be addressed through the review of the Local Government Act 1974. It is proposed that the new legislation will require an SCI to exist between a local authority and all its sub-entities, and additional reporting requirements for all local government activity are also to be introduced.

We expect these matters to be addressed through the review of the Local Government Act 1974.

Official information provisions

Clause 8 makes LATEs subject to the official information provisions (excluding meeting provisions) of the Local Government Official Information and Meetings Act 1987. Clause 9 makes LATEs subject to the jurisdiction of the Ombudsmen under the Ombudsmen Act 1975. The intent of these provisions is to reinforce the purpose of the bill of increasing the accountability and transparency of LATEs to their communities.

Effect on commercial position of LATEs and on sensitive information

Some submissions argued that because LATEs operate in a competitive environment it is inappropriate for them to be subject to the provisions of the Local Government Official Information and Meetings Act and the Ombudsmen Act. It was also suggested that commercially sensitive information provided to LATEs, by companies that are not LATEs, should not be subject to the provisions of clause 8.

Balancing the interests of ratepayers and LATEs

An SCI is not always an adequate accountability tool to access information from LATEs to gain the assurance that the services they provide are quality for money. The application of the Official Information Act 1982 to all 16 State enterprises has created a discipline of ensuring information about their activities is more forthcoming. In this light, a similar advantage can be expected from making LATEs subject to the Local Government Official Information and Meetings Act and the Ombudsmen Act. We also acknowledge the concern of

some LATEs that this could force LATEs to utilise their resources responding to an unnecessary overload of information requests when such resources could otherwise be allocated to their primary function of service delivery or the employment of more staff. A view was expressed that the proposed provisions could tempt some LATEs to obscure material in their reports, making it even more difficult for the public to obtain certain information.

Confidence in the Ombudsmen

In spite of these concerns, we consider the existing safeguards in the Local Government Official Information and Meetings Act for the protection of commercially sensitive information are adequate to protect the commercial position of LATEs and commercially sensitive information they might receive. We are also satisfied the Office of the Ombudsmen will approach any complaints about the withholding of information by LATEs in a manner that balances the public interest with the commercial sensitivities of the information concerned. We therefore recommend that no change be made.

Submission from New Zealand Local Government Insurance Corporation

There is some uncertainty whether the New Zealand Local Government Insurance Corporation should be exempt from clauses 8 and 9. The Corporation suggested it should be exempt because it does not trade publicly and there is no public interest that requires it to be subject to a public disclosure regime. We understand the future legal status of 'inadvertent LATEs' is being considered in the context of the review of the Local Government Act 1974. We consider the Corporation should be subject to clauses 8 and 9 until such time as it is determined that those provisions should not apply.

Minority view

Opposition members do not support confusing the role of LATEs with social and environmental responsibilities that do not apply to other companies. If councils wish LATEs to perform non-commercial activities, they should do so in a transparent way by specifically paying for such activities. If there is a need to improve environmental or social laws, the proper place to do this is in all laws, not just those laws that apply to LATEs. We also believe there needs to be

consistency with State enterprises, to which the Government has not applied these additional responsibilities.

Opposition parties do support the extension of the Local Government Official Information and Meetings Act and the role of the Ombudsmen to LATEs in the same way as they apply to State enterprises. The public owns these companies and does have the right to information about those businesses that is not commercially sensitive.

Appendix

Committee process

The Local Government (Elected Member Remuneration and Trading Enterprises) Amendment Bill was referred to the Local Government and Environment Committee on 13 December 2000. The closing date for submissions was 19 February 2001. We received and considered 54 submissions from interested groups and individuals. We heard 24 submissions. Hearing evidence took five hours and 15 minutes and consideration took six hours and 30 minutes.

We received advice from the Department of Internal Affairs and the Controller and Auditor-General.

Committee membership

Jeanette Fitzsimons (Chairperson)

Martin Gallagher (Deputy Chairperson)

David Benson-Pope

Georgina Beyer

Gerry Eckhoff

Ann Hartley

Joe Hawke

Brian Neeson

Eric Roy

Hon Dr Nick Smith

**Local Government (Elected Member
Remuneration and
Trading Enterprises) Amendment**

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

[Subject to this Act,
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Text struck out by a majority

Struck out (unanimous)

[Subject to this Act,
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Text struck out unanimously

New (majority)

[Subject to this Act,
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Text inserted by a majority

New (unanimous)

[Subject to this Act,
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Text inserted unanimously

< Subject to this Act, >

Words inserted by a majority

Hon Sandra Lee

Local Government (Elected Member Remuneration and Trading Enterprises) Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the Local Government (Elected Member Remuneration and Trading Enterprises) Amendment Act **2000**.

(2) In this Act, the Local Government Act 1974¹ is called "the principal Act". 5

¹ 1974 No 66

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Interpretation

Section 101ZZE of the principal Act is amended by repealing the definition of **Appropriate Minister**. 10

**Part 1
Remuneration for local authority positions**

4	New sections 101ZZF to 101ZZM substituted	
	The principal Act is amended by repealing sections 101ZZF to 101ZZV, and substituting the following sections:	5
	“101ZZF Higher Salaries Commission to determine remuneration	
	“(1) The Higher Salaries Commission must determine the remuneration, allowances, and expenses payable to the following persons:	10
	“(a) chairpersons of local authorities:	
	“(b) deputy chairpersons of local authorities:	
	“(c) chairpersons of community boards:	
	“(d) chairpersons of committees of local authorities:	
	“(e) chairpersons of committees of community boards:	15
	“(f) members of local authorities:	
	“(g) members of community boards.	
	“(2) The Higher Salaries Commission may do 1 or more of the following things under subsection (1) :	
	“(a) fix scales of salaries:	20
	“(b) fix scales of allowances:	
	“(c) fix ranges of remuneration:	
	“(d) fix different forms of remuneration:	
	“(e) prescribe rules for the application of those scales, ranges, or different forms of remuneration:	25
	New (unanimous)	
	“(ea) prescribe rules for reimbursing expenses incurred by elected members:	
	“(eb) prescribe circumstances in which an ex gratia payment of salary for loss of office may be made to a person listed in section 101ZZF :	30
	“(ec) prescribe the amount of an ex gratia payment of salary under paragraph (eb) or the method of calculating that amount; however, the amount prescribed must not exceed the amount of salary paid to the person in the 3 months immediately preceding the ex gratia payment:	35

- “(f) differentiate between persons occupying equivalent positions in different local authorities or community boards:
- “(g) differentiate between persons occupying equivalent positions in the same local authorities or community boards: 5
- “(h) make determinations that apply to individuals, or groups occupying equivalent positions.

“101ZZG **Mandatory criteria for Commission**

- “(1) In determining remuneration under **section 101ZZF(1)**, the Commission must have regard to— 10
 - “(a) the need to minimise potential for remuneration to distort the behaviour of the persons listed in **section 101ZZF(1)** in relation to their positions as listed in that subsection; and 15
 - “(b) the need to achieve and maintain fair relativity with the levels of remuneration received elsewhere; and
 - “(c) the need to be fair both—
 - “(i) to the persons whose remuneration is being determined; and 20
 - “(ii) to ratepayers; and
 - “(d) the need to recruit and retain competent persons.
- “(2) The criteria in **subsection (1)** do not prevent the Commission determining allowances for attending meetings additional to salary. 25

New (unanimous)

“101ZZGA **Submissions to Commission**

- “(1) Any person or organisation may make a written submission to the Higher Salaries Commission about a determination to be made by the Commission under **section 101ZZF**.
- “(2) The Higher Salaries Commission may, in its discretion, invite a person or organisation to make an oral submission about a determination to be made by the Commission under **section 101ZZF**. 30

New (unanimous)

“101ZZGB Frequency of adjustments

To avoid doubt, section 19 of the Higher Salaries Commission Act 1977 applies to determinations made under **section 101ZZF**.

“101ZZH Determination is a regulation

A determination by the Higher Salaries Commission under **section 101ZZF** is a regulation under the Regulations (Disallowance) Act 1989.

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Struck out (unanimous)

“101ZZI Funds from which remuneration to be paid

“(1) A local authority must pay remuneration determined under **section 101ZZF** from its general revenues.

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“(2) However, remuneration payable to the chairperson of a community board, or to members of a community board, or to members of committees or subcommittees of community boards, must be paid from the general revenues derived in respect of the community.

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“101ZZJ Publication of determinations

The Commission must—

“(a) deliver to the Minister a copy of each determination made by it under **section 101ZZF**; and

“(b) publish a determination made under **section 101ZZF** in the *Gazette* within 14 days of it being delivered to the Minister.

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Struck out (unanimous)

“101ZZK Levy to pay Commission’s costs

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, impose a levy on local authorities to pay the costs of the Higher Salaries Commission in making determinations under **section 101ZZF**.

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Struck out (unanimous)

- “(2) An Order in Council under **subsection (1)** may prescribe 1 or more of the following:
- “(a) the basis on, or method by, which the levy is to be assessed:
 - “(b) how the levy is to be paid or collected: 5
 - “(c) the local authorities or classes of local authority liable to pay the levy.
- “(3) **Subsection (2)** does not limit **subsection (1)**.
- “(4) A levy under **subsection (1)** is a regulation under the Regulations (Disallowance) Act 1989. 10

New (unanimous)

- “101ZZK **Levy to pay Commission’s costs**
- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, impose a levy on local authorities in each financial year to pay the costs of the Higher Salaries Commission in the previous financial year in making determinations under **section 101ZZF**. 15
- “(2) The order—
- “(a) must specify the amount of the levy or the way that the levy must be calculated; and
 - “(b) must specify the local authorities or classes of local authority liable to pay the levy; and 20
 - “(c) may impose a levy that is calculated to include the costs of the Commission from 1 July 2001, even though regulations that impose the levy are made after that date; and 25
 - “(d) may authorise—
 - “(i) the deduction of over-recoveries in respect of a financial year from a levy payable in subsequent financial years; or
 - “(ii) the addition of under-recoveries in respect of a financial year to a levy payable in subsequent financial years; and 30
 - “(e) may prescribe how the levy must be paid or collected.

New (unanimous)

- “(3) A local authority must pay a levy required by regulations made under this section.
- “(4) The amount of unpaid levy is recoverable in a court of competent jurisdiction as a debt due to the Crown.
- “(5) A levy under **subsection (1)** is a regulation under the Regulations (Disallowance) Act 1989. 5
- “101ZZL **Meaning of remuneration**
In **sections 101ZZF, 101ZZG, and 101ZZI**, **remuneration** includes—
- “(a) salary, wages, and other payments in return for services; and 10
- “(b) monetary and non-monetary benefits and emoluments in return for services.
- “101ZZM **Greytown District Trust Lands Trustees**
- “(1) For the purpose of this section, the trust board is to be treated as if it were a statutory board. 15
- “(2) A member of the trust board is entitled to—
- “(a) fees, a salary, or allowances for services as a member; and
- “(b) travelling allowances or travelling expenses for time spent travelling as a member. 20
- “(3) The Fees and Travelling Allowances Act 1951 applies to determine the amount of the fees, salary, allowances, or expenses referred to in **subsection (2)**.
- “(4) In **subsection (1)**, the term **statutory board** has the same meaning as in section 2 of the Fees and Travelling Allowances Act 1951. 25
- “(5) In this section, **trust board** means the Greytown District Trust Lands Trustees constituted by section 3 of the Greytown District Trust Lands Act 1979.”
- 5 Greytown District Trust Lands Act 1979 amended 30**
Section 14(aa) of the Greytown District Trust Lands Act 1979 is repealed.

- 6 Schedule 4A amended**
Schedule 4A of the principal Act is amended by repealing paragraph (e) of item 2.
- Part 2**
Local authority trading enterprises 5
- 7 New section 594Q substituted**
The principal Act is amended by repealing section 594Q, and substituting the following section:
- “594Q Principal objective to be successful business**
- “(1) The principal objective of a local authority trading enterprise is to operate as a successful business. 10
- “(2) Operating as a successful business includes—
- “(a) achieving the objectives of its shareholders, both commercial and non-commercial, as specified in the statement of corporate intent; and 15
- “(b) being a good employer; and
- “(c) exhibiting a sense of social ~~and environmental~~ responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so. 20
- “(3) In **subsection (2)(b)**, the term **good employer** has the same meaning as in section 119F(2).”
- 8 Application of Local Government Official Information and Meetings Act 1987**
- Parts I to VI (official information provisions) of the Local Government Official Information and Meetings Act 1987 25
apply to local authority trading enterprises as if they were local authorities within paragraph (a) of the definition of **local authority** in section 2(1) of the Local Government Official Information and Meetings Act 1987. 30

Struck out (majority)

9 Ombudsmen Act 1975 amended

Part II of the First Schedule of the Ombudsmen Act 1975 is amended by inserting, after the item “The Legal Services Board.”, the item “Local authority trading enterprises under Part XXXIVA of the Local Government Act 1974.”

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New (majority)

9 Ombudsmen Act 1975 amended

Part III of the First Schedule of the Ombudsmen Act 1975 is amended by inserting, after the item “Licensing Trusts.”, the item “Local authority trading enterprises under Part XXXIVA of the Local Government Act 1974.”

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Legislative history

28 November 2000

Introduction (Bill 87-1)

13 December 2000

First reading and referral to Local Government and Environment Committee
