

New Zealand Law Society

Submission on Local Government (Auckland Law Reform) Bill

1. The Society sets out a number of comments on the Local Government (Auckland Law Reform) Bill, intended to enhance the workability of the legislation.

Clause 8: Interpretation

Clause 8(1) – definition of “selection body”

2. This clause amends section 5(1) of the Local Government (Tamaki Makaurau Reorganisation) Act 2009. The definition of “selection body” refers to a “body established by clause 2 of Schedule 3”. The intended reference would seem to be to clause 2 of Schedule 3 of the Local Government (Auckland Council) Act 2009, not clause 2 of Schedule 3 of the Local Government (Tamaki Makaurau Reorganisation) Act.

Recommendation

3. That the committee satisfy itself that the definition is correct.

Clause 45: New Parts 4 to 8 substituted

Proposed new section 72

4. Proposed section 72(1)(b) refers to information that the Auckland Council holds, “as that term is used in the Local Government Official Information and Meetings Act 1987 *and* the Privacy Act 1993” (emphasis added). The two statutes contain slightly different provisions setting out when information is held by an agency. Presumably the “and” linking the titles of the two statutes is intended to be disjunctive.
5. Proposed section 72(2) refers to “Decisions on whether or not subsection (1)(b) and (c) apply”, without stating who will be making such decisions. It is clear from proposed section 72(3) that it is contemplated that the Auckland Council will be making such decisions, but not whether the board established under Part 7 will also be; for example, if the Auckland Council does not turn its mind to the issue.

Recommendations

6. That the Committee satisfy itself that the intended meaning of proposed new section 72(1)(b) is clear.
7. That the Committee satisfy itself that the Bill is sufficiently clear on the question of who will be making decisions on whether or not proposed new subsections 72(1)(b) and (c) apply to information the Auckland Council provides to the board.

Schedule 2: New Schedules 2 and 3 added to Local Government (Auckland Council) Act 2009

Proposed new Schedule 3 – Provisions relating to board promoting issues of significance for mana whenua and Maori of Tamaki Makaurau

Clauses 5, 9 and 10: disqualification from acting as a member

8. Clause 5(2) of proposed new Schedule 3 sets out the classes of person who are disqualified from being a member of the board to be established under Part 7 of the Local Government (Auckland Council) Act 2009, such as undischarged bankrupts. However, a member who becomes disqualified after being appointed to the board does not automatically cease to be a member pursuant to clause 9. It appears that he or she may be removed by a majority of the board pursuant to clause 10 for just cause, but does not have to vacate office if the other members of the board do not act. This is to be contrasted with, for example, the position governing directors of Auckland Transport, who cease to hold office as a director automatically if they become disqualified from being a director (clause 5(1)(e) of proposed new Schedule 2 to the Local Government (Auckland Council) Act 2009).

Recommendation

9. That the Committee satisfy itself that members of the mana whenua and Maori board should not have to vacate office if they become disqualified from holding office.

Clause 12: Chairperson and deputy

10. Clause 12(1) provides that the board must appoint a chairperson and deputy chairperson “at the first meeting after each ending of a term of appointment”. This does not expressly cover the first appointments following the establishment of the board.

Recommendation

11. That the Committee consider whether the Bill should expressly provide for the initial appointment of a chairperson and deputy following the establishment of the board, or whether this should be left to implication.

Clause 13: Setting up meetings

12. Clause 13(2) sets out the requirements for notices of meetings. It does not expressly provide that notices must be given either in writing or electronically, although this might be implicit in the requirement that notices be given by hand, by post or by an electronic means (clause 13(2)(f)).

Recommendation

13. That the Committee consider whether the Bill should expressly provide for notices of meeting to be given either in writing or electronically.

Clause 17: Remuneration

14. Clause 17 provides for the initial setting of fees payable to board members, which includes a recommendation from an independent expert.
15. Although the Auckland Council appoints the expert, clause 17(3)(d) provides for the expert to make his or her recommendation to the board, not the Council.
16. The wording of clauses 17(1) and (4) (“an appropriate fee”, “the fee to pay to members of the board”) suggests that only one level of fee may be set, with the chairperson and deputy chairperson receiving the same fee as ordinary members of the board despite their potentially greater level of responsibility.

Recommendation

17. That the Committee consider whether:
 - (a) it is intended that the expert make his or her recommendation to the board, rather than to the Auckland Council or to the Council and the board;
 - (b) the Bill should expressly recognise that different fee levels may be set for the chairperson and deputy of the board.

Clause 20: Funding

18. Clause 20 provides for an annual funding agreement between the board and the Auckland Council, which must include “the remuneration payable to the board’s members” (clause 20(4)). The board and council are required to “negotiate the agreement in good faith” (clause 20(5)). Either party may initiate a review of the funding agreement under clause 20(7).
19. Clause 17(4) provides for the Auckland Council to set the fee for board members initially. Expenses are set in accordance with the fees framework (clause 18). It is not clear how these provisions work with the provisions in clause 20 relating to the funding agreement. For instance, is it intended that, although the council sets the fee for members initially, thereafter it ceases to do so and fees must be agreed by the council and board in the funding agreement; does this also apply to expenses; and is “the remuneration payable to the board’s members” (clause 20(4)) limited to fees and expenses or does it include something else?

Recommendation

20. That the Committee consider whether:
 - (a) the meaning of “the remuneration payable to the board’s members” in clause 20(4) should be clarified;
 - (b) it should clarify whether fees, expenses and any other element of remuneration (if there is one) must be agreed to by the board and council, or whether fees are to be set and reviewed periodically by the council using a process such as that in clause 17, and expenses are to be determined in accordance with clause 18.

Clause 28: Ability to delegate

21. Clause 28(1) gives the board the power to delegate functions and powers to certain classes of person, including “a member or members”, members of the secretariat, “a committee” and “any other person or persons approved by the board and the Auckland Council”.
22. It is not clear what the difference is between “members” of the board and a “committee”. If a committee is not limited to members of the board, but may include anyone, this would seem to be contrary to the spirit of the provision, which requires approval of the council as well of the board for a delegation to anyone except a member of the board or its secretariat.

Recommendation

23. That the Committee consider whether the difference in meaning between members of the board and a committee (as used in clause 28(1)) should be clarified or, if there is no difference in meaning, one of the terms should be removed.

Clause 34: Resolution of disputes

24. Clause 34 deals with the resolution of disputes between the board and the selection body. Clause 34(2) requires the board and the selection body to try in good faith to agree on a process for resolving the dispute. Clause 34(3) sets out three processes that the board and selection body “may consider”. The wording used suggests that these are the only processes that may be considered, although, conceivably, there could be other processes that might also be of assistance.

Recommendation

25. That the Committee satisfy itself that it is appropriate to limit the board and the selection body to the three dispute processes listed in clause 34(3).

Clause 98: Fees and charges: regulatory services

Subclauses 98(2) and (3)

26. These subclauses seem to be contradictory in that subclause 98(2) suggests that an Order in Council **may** be made, and subclause 98(3) that it **must**.

Recommendation

That the committee satisfy itself that the Bill is clear on whether an Order in Council must or may be made.

John Marshall QC
President
12.2.2010