New Zealand Law Society
Te Kāhui Ture o Aotearoa

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Department of Internal Affairs | Te Tari Taiwhenua
Wellington

By email: simplifyinglocalgovernment@dia.govt.nz

Tēnā koutou e te komiti

Simplifying local government: feedback on the draft proposal

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide the Department of Internal Affairs (**DIA**) with feedback on its proposal to make local government simpler, clearer, and more cost-effective for all New Zealanders (**Proposal**). This submission has been prepared with input from the Law Society's Law Reform, Public Law and Environmental Law Committees.[1]

1.2 Whilst the Law Society is neutral on whether there is a need to simplify local government, the Law Society supports efforts to strengthen local democracy by clarifying the role of local government within New Zealand's wider constitutional framework. As stated in Palmer and Knight:[2]

> Local government has no formal constitutional status in New Zealand but its total abolition now would be unthinkable. In a formal legal sense, the continuing existence of local authorities and the generous framing of their operating mandates are dependent on the benevolence of central government. In reality, though, the importance, existence and traditional activities of local government are generally assumed. Calls for formal constitutional recognition of local democracy — along with the associated notion of subsidiarity — occasionally bubble up. We consider that, regardless of formal legal status, local government's operating framework has important constitutional characteristics threaded through it.

1.3 As such, the Law Society's approach to providing comment on the Proposal reflects its interest in the clarity, strength and protection of the constitutional framework of New Zealand, including creations of statute (such as local government) that have constitutional characteristics. The Law Society takes from the overall tenor of the

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1 More information about our law reform committees is available on the Law Society's website: https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/.

2 MSR Palmer and DR Knight *The Constitution of New Zealand: A contextual analysis* (Hart Publishing, Oxford, 2022) at 231. Footnotes omitted. See also Kenneth Palmer *Local Government Law in Aotearoa New Zealand* (2nd ed, ThomsonReuters, New Zealand, 2022) at 23.8.1, who notes that "[t]he substantive divisions of power and functions between central and local government have remained largely unchanged since 1876".

Proposal that the Government's view is that some form of local government should continue. This appears to be a tacit acknowledgment that local government has a place in the constitutional fabric of New Zealand. The Law Society supports this as a starting position.

1.4 In summary, the Proposal is to change the decision-maker for regional decisions. The Proposal does not address the wider context and the debate around whether there should be less ambiguous constitutional recognition of the place of local government. Nor does the Proposal address the specific roles, functions, powers and competencies that any reformed local authorities (decision-makers) may have longer-term, which means it is difficult to assess. However, we note that the Proposal contemplates further details will be provided, at least in respect of regional councils, through a Government review of regional councils' roles and functions.

1.5 The Law Society encourages the Government to set out, to the extent practicable, a comprehensive picture with any legislation introduced to facilitate reform so that the Proposal can be properly assessed. This includes the proposed statutory framework for developing and implementing the regional reorganisation plans and the future state of local government post-implementation of the regional reorganisation plans. As local authorities are creatures of statute, problems with their operation (including some of those stated in the Proposal such as lack of understanding of respective functions, inefficiency, cost of operating local government) are potentially not of their making, rather resulting from the legislation made by Parliament. The Proposal is an opportunity to address these issues in the legislation. Piecemeal reform of local government should be avoided.

1.6 Finally, the Law Society also encourages consideration of the *Legislation Guidelines* where relevant, including parts 1 and 2 of chapter 4, when advancing any proposal through legislation.[3]

1.7 The brief following remarks directly respond to some of the questions set out in the Proposal. However, the Law Society recognises that legal practitioners living and working throughout the country may have different views on the specific governance of their local areas. Accordingly, the Law Society has not addressed all of the questions where legal professionals could reasonably be expected to have different views.

2 Response to Proposal questions

Do you agree there is a need to simplify local government? What do you think of the proposed approach overall?

2.1 As noted above, the Law Society is neutral on whether there is a need to simplify local government. We refer to our comments above about the need for a comprehensive reform proposal, if any proceeds. The Law Society notes that the Proposal, as outlined, is about changing the decision-makers at the regional level in local government. This may not be sufficient to address some of the problems identified in the Proposal, as these problems may be a result of the existing legislation. Therefore, piecemeal reform of local government should be avoided.

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3 Legislation Design and Advisory Committee *Legislation Guidelines: 2021 edition* (September 2021).

Do you agree with replacing regional councillors with a CTB? What do you like or dislike about the proposal to replace regional councillors with a CTB?

2.2 The Law Society does not have a view on the benefit of replacing regional councillors with combined territories boards, except for the comments made above that changing the decision-makers at the regional level in local government may not be sufficient to address some of the problems noted in the Proposal. However, there are some practical considerations that should also be taken into account. The Law Society has some concerns regarding the ability of mayors to fully participate in both leading their respective councils and being members of the combined territories boards. Should the proposal go ahead, it will reshape how regional-level local government is structured at the same time as the Government is also reforming the resource management system, which will also require the involvement of regional councils (and those replacing regional councils). DIA may wish to consider allowing individual councils to choose who represents them on the combined territories boards. This could be a mayor or a councillor.

What level of Crown participation in regional decision-making do you prefer?

2.3 The Law Society's view is there should be minimal, if any, Crown participation in regional decision-making. Crown participation should not be the default position. If anything, it should exist as an option when there is a "problem" in certain situations such as that described in the definition of "problem" in section 256 of the Local Government Act 2002 (**LGA**), in the context of the cascade of Ministerial intervention powers set out in Part 10 of the LGA.

2.4 The exercise of Parliamentary sovereignty in making legislation setting out the structures, functions and powers of local government already ensures there is consideration of national interest in regional decision-making. Heavy-handedness of central government involvement in local government decision-making would be contrary to the benefits which local government can provide in terms of pluralism (including avoiding concentration of powers and ensuring appropriate checks and balances of decision-makers, and democratic representation at the local level).

Do you agree that mayors on the CTB should have a proportional vote adjusted for effective representation? What do you like or dislike about the voting proposal for the CTB?

2.5 The Law Society agrees with the principle of fair and effective representation (the term used in Schedules 3 and 3A of the LGA, not just "effective" representation as referred to in the Proposal) but considers insufficient information has been provided to enable more substantial comment to be provided on this aspect of the Proposal. The voting proposals provided in Annex B appear too simplistic and there may, in particular, be a need to reconsider or more fully justify the proposed two-stage voting arrangement for resource management decisions described further in Annex C of the Proposal. The Law Society is not aware of any other contexts where local government decision-making requires such a dual majority and it would create the potential for deadlock on the Combined Territories Boards.

2.6 The Law Society recommends that officials seek expert advice on voting power options before considering the two options set out on page 15 of the Proposal under the heading

"How would the Local Government Commission balance effective representation with population size?".

Do you support the proposal to require CTBs to develop regional reorganisation plans? What do you think about the criteria proposed for assessing regional reorganisation plans?

2.7 The Law Society is neutral about whether changing the decision-maker for developing the proposed regional reorganisation plans will result in better outcomes than the status quo.

2.8 In addition to the criteria proposed, the Law Society encourages DIA to broaden the assessment criteria to also address transparency and accountability to local communities, contribution to the Crown's responsibility to take appropriate account of the Treaty principles, whether there has been public consultation, and how any feedback from that consultation has been taken into account when developing the regional reorganisation plans.

What do you think about how the proposal provides for iwi/Māori interests and Treaty arrangements?

2.9 The Law Society is concerned that the Proposal fails to demonstrate whether there has been any meaningful regard to the impact on the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi / Te Tiriti of Waitangi (as required under section 4 of the LGA). The Proposal only makes limited reference to two local Acts, and the obligation to continue establishing and maintaining processes for Māori to contribute to decision-making and ensuring consultation opportunities.

2.10 The Proposal does not articulate whether or how the overriding objective of simplicity is consistent with the Treaty principles. The Law Society recommends that an urgent Treaty impact assessment be conducted before any decisions are made about whether to progress with the Proposal.

2.11 The Law Society is also concerned that the effect of the Proposal would be to undermine recent local democratic decision-making in some regions where voters recently decided to retain Māori constituencies (Greater Wellington Regional Council and Horizons Regional Council), following the issue being put to a binding poll in conjunction with the 2025 triennial general election for local authorities as a result of the change made by the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024.

2.12 The Proposal would also mean that relevant communities were put to unnecessary expense in the poll process (including those communities that voted to abolish Māori constituencies). There appears to be a lack of an overall principled approach to decision-making about the future of local government in New Zealand, risking the policy reform programme progressing in an uncoordinated and disjointed manner. This has the potential to undermine public confidence, and lead to future difficulties. As noted above, piecemeal reform of local government should be avoided.

3 Next steps

3.1 We hope this feedback is useful. Please feel free to get in touch with Aimee Bryant, Manager Law Reform and Advocacy (aimee.bryant@lawsociety.org.nz , if you have any questions or wish to discuss this feedback further.

Nāku noa, nā



David Campbell
Vice President