

Local Government (Management of Local Authorities) Amendment Bill

Submission of the New Zealand Law Society Te Kāhui
Ture o Aotearoa

17 September 2026

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa welcomes the opportunity to comment on the Local Government (Management of Local Authorities) Amendment Bill (**Bill**).
- 1.2 This is a Member's Bill which seeks to "minimise the increasing tensions between councillors and senior management of a number of local authorities".¹ It seeks to achieve this objective by amending the Local Government Act 2002 (**LGA**) to provide that:
- (a) the chief executive of a local authority is subject to the direction and/or supervision of the governing body of that local authority (proposed sections 41B and 42(3A) in clauses 4 and 5); and
 - (b) a member of a local body can obtain advice from any person (proposed section 42(3B) in clause 5).
- 1.3 In the Law Society's view, the proposal to give direction and supervision powers to governing bodies raises some significant concerns, which we discuss below. This submission, prepared with input from the Law Society's Employment Law and Public Law Committees,² recommends amendments to address those concerns, and to ensure the resulting legislation is workable, and consistent with principles of good governance and management, transparency and accountability.
- 1.4 The Law Society **wishes to be heard**.

2 Empowering governing bodies to 'direct' chief executives

- 2.1 The LGA presently distinguishes the functions, powers and responsibilities of chief executives from those of governing bodies: it provides that governing bodies are responsible and democratically accountable for the local authority's decision-making, and chief executives are responsible to their local authority for implementing and operationalising those decisions.³ This demarcation of the two roles helps to identify who is accountable for the decisions and actions of governance and management.
- 2.2 We note that the Bill and the LGA do not currently define the terms 'direction' and 'supervision'. As a result, the precise scope of the powers that will be given to governing bodies is unclear. Absent any clearly articulated limits on their scope, the Bill risks granting unduly broad powers to governing bodies to direct operational decisions, which could have the effect of governing bodies becoming heavily involved in the day-to-day activities of chief executives and senior management.
- 2.3 In making chief executives subject to the proposed expanded direction of governing bodies, the Bill also risks transferring aspects of the chief executive's responsibilities to the governing body. This would represent a significant departure from current arrangements under the LGA, with the potential to create uncertainty as to who will

¹ Explanatory Note of the Bill.

² See the Law Society's website for more information about these committees: www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/.

³ The responsibilities of governing bodies are set out in section 41 of the LGA.

- ultimately be accountable for decisions and actions taken by chief executives under directions from governing bodies.
- 2.4 We note the amendments in clauses 4 and 5 also appear to be inconsistent with existing sections 42(2)(c), (d) and (e) of the LGA (and the Bill does not propose to amend these paragraphs). These paragraphs of subsection (2) provide that it is the chief executive – and not the governing body – that is responsible for deciding how the responsibilities under section 42 must be carried out to required standards.
- 2.5 The LGA currently sets out extensive requirements for decision-making by local authorities.⁴ These requirements act as safeguards on the exercise of decision-making powers, and reflect Parliament’s intended balance of transparency, accountability, public participation, and flexibility to achieve the purposes of the Act. This Bill now creates an additional, broad decision-making power without clarifying whether the existing checks and balances in the LGA would apply to decisions to direct and supervise chief executives. As a result, it is unclear :
- (a) whether such decisions would need to be made in accordance with sections 77, 78, 80, 81 and 82 of the LGA; and
 - (b) in particular, whether governing bodies would be required to consult the public on significant⁵ decisions to direct chief executives.
- 2.6 It is also unclear how the provisions of this Bill will affect the application of the Health and Safety at Work Act 2015 (**HSWA**) to governing bodies. Sections 44(3) and 52 of the HSWA currently state that governing body members are not required to comply with duties and obligations under that Act, and do not commit offences under the HSWA when acting in their capacity as governing body members. However, the amendments proposed in the Bill raise questions as to whether this carveout should continue to apply to governing body members who exercise the new power to direct and supervise chief executives (and in doing so, become more directly and heavily involved in implementing and operationalising decisions). Further policy work would need to be undertaken to determine if this should be the case. The position of the chief executive may also be jeopardised where the governing body directs the chief executive to act in a way that the chief executive considers is contrary to their obligations under HSWA.
- 2.7 The Law Society therefore queries whether it is appropriate to depart from the current framework in the LGA in this way, and whether a Member’s Bill is an appropriate vehicle for progressing amendments of such significance (particularly lacking any analysis of other options for achieving the policy objectives, and the potential consequences of these amendments).
- 2.8 We also note that the Bill does not clearly identify the policy problem which it seeks to resolve. While the Explanatory Note states that the Bill seeks to minimise “increasing tensions” between councillors and senior management, it does not elaborate on what

⁴ See Part 6 of the LGA (and in particular, Subpart 1—Planning and decision-making).

⁵ It is also unclear whether local authorities would be required to update their significance and engagement policies adopted in accordance with section 76AA of the LGA to accommodate this new decision-making power.

those tensions are, what has caused them, and how the proposed power to give directions will minimise those tensions. The first reading debates on the Bill suggest these tensions arise primarily from difficulties in accessing information and advice which can assist governing bodies with their decision-making.⁶ However, the amendments in the Bill go beyond enabling access to information and advice, as we discuss above.

Addressing these concerns

- 2.9 In our view, the underlying policy objective of the Bill could be more appropriately achieved by progressing the amendments relating to the *supervision* of chief executives, and deleting the amendments which would enable them to be *directed* as currently proposed in the Bill.
- 2.10 If the Select Committee agrees to such an amendment, we recommend changing the heading of new section 41B to 'Role of mayor and other members in ~~management~~ *supervision* of local authority' to reflect the revised scope of the governing body's powers. Consequential changes would also be needed to the wording of the proposed amendments.
- 2.11 If the Select Committee decides it is appropriate for governing bodies to have the power to direct chief executives (despite the concerns we have raised), then we recommend:
- (a) Considering whether the obligations and offence provisions in the HSWA should apply to governing body members who exercise the proposed power to give directions, whether acting in accordance with a direction of the governing body should amount to a defence for a chief executive to an offence under the HSWA, and, if appropriate, amending the Bill to include any changes to provisions of the HSWA.
 - (b) Making necessary amendments to subsections (c), (d) and (e) of section 42(2) of the LGA to address the inconsistencies we have discussed at [2.4] above.
 - (c) Considering whether a longer commencement period would be desirable, so local authorities have adequate time to prepare for these changes (for example, by reviewing and updating existing employment agreements of chief executives, job descriptions of chief executive roles, and existing delegations, to ensure they accurately reflect the changes to the nature of the chief executive's role). At present, clause 2 of the Bill provides that the amendments will come into force on the day after Royal assent.
 - (d) Clarifying whether the offence in section 238, of failing to comply with a direction given under the LGA, would apply to chief executives who fail to comply with a direction from a governing body.
- 2.12 We also recommend amending the Bill to provide that the methods by which the governing bodies will direct and/or supervise chief executives will be set out in local governance statements produced under section 40 of the LGA. These statements could clarify, for example, whether the exercise of the direction and supervision powers should

⁶ Hansard (22 July 2026). We note the Local Government (System Improvements) Amendment Bill (2025) seeks to address this very problem.

require a resolution of the governing body or a statement of expectations from the Mayor or Chair on behalf of the governing body, and confirm whether any direction or supervision will be in addition to any performance reviews and management through the employment relationship. Explicitly clarifying these matters in this way could help:

- (a) avoid any arbitrary and punitive exercise of the direction and supervision power;
- (b) better manage the employment relationship between the chief executive and the governing body; and
- (c) enhance transparency and accountability.

- 2.13 Such an amendment could be incorporated into the Bill as an extension of the existing requirement in section 40(1)(j) of the LGA, which provides for the inclusion in a local governance statement information on the management structure and the relationship between management and elected members.

3 Scope of governing body's powers

- 3.1 Proposed section 41B in clause 4 of the Bill provides that the “activities of the local authority” must be managed by the chief executive subject to the direction or supervision of the governing body of the local authority. Proposed section 42(3A) in clause 5 then more broadly refers to the chief executive’s “performance of responsibilities and exercise of powers” being subject to direction and supervision of the governing body.
- 3.2 We note that the management of activities of the local authority is just one of the many responsibilities of the chief executive.⁷ Other responsibilities include:⁸
- (a) implementing decisions of the local authority;
 - (b) providing advice to members of the local authority and to its community boards;
 - (c) facilitating and fostering representative and elector participation in elections and polls; and
 - (d) maintaining effective planning and reporting systems.
- 3.3 It is unclear why clause 4 refers only to the management of activities, and not to other responsibilities that sit with the chief executive. This has the potential to create uncertainty during the implementation of the Bill, and the scope of the powers available to a governing body under the Bill to direct or supervise a chief executive.
- 3.4 This uncertainty could undermine the objective of the Bill to “make the roles and responsibilities of the mayor, councillors, and the chief executive of local authorities clearer”.⁹ The Select Committee should consider whether the wording of clauses 4 and 5 could be more closely aligned to clarify whether the Bill gives governing bodies the powers necessary to supervise chief executives:

⁷ LGA, s 42(2)(d).

⁸ LGA, s 42(2). We note, however, that “responsibilities or powers that relate to the employment of staff” are excluded from proposed section 42(3A).

⁹ Explanatory Note of the Bill.

- (a) only in the course of managing the activities of the local authority under section 42(2)(d) of the LGA; or
- (b) more generally (that is, in relation to any of the responsibilities listed in section 42(2)).

3.5 A narrower power would be preferable, given the concerns we have identified in section 2 above.

4 Performance of responsibilities relating to the employment of staff

4.1 Proposed section 42(3A) in clause 5 clarifies that the governing body's direction and supervision powers do not extend to the chief executive's responsibilities and powers that "relate to the employment of staff". This is a broadly framed exclusion, and there are a number of responsibilities that may come within this exclusion, such as:

- (a) employing, on behalf of the local authority, the staff of the local authority (in accordance with any remuneration and employment policy);¹⁰
- (b) negotiating the terms of employment of the staff of the local authority (in accordance with any remuneration and employment policy);¹¹
- (c) maintaining appropriate standards of integrity and conduct among the employees of the local authority;¹²
- (d) ensuring the local authority is a good employer;¹³ and
- (e) promoting equal employment opportunities.¹⁴

4.2 We recommend expressly clarifying which responsibilities are excluded from the scope of the proposed direction and supervision powers.

4.3 We also recommend clarifying whether matters relating to contractors who are not *employed* by the local authority¹⁵ will become subject to the governing body's direction and supervision, or fall within the exclusion in proposed subsection (3A).

5 Ability to seek advice from any person

5.1 Proposed section 42(3B) in clause 5 provides that a member of a local body can obtain advice from any person. However, it is unlikely that the present drafting of section 42(2)(b) of the LGA currently prevents local authority members from seeking advice from others. We therefore recommend amending proposed subsection (3B) as follows (proposed addition italicised):

For the avoidance of doubt, subsection (2)(b) does not prevent a member of a local authority from obtaining advice from any other person.

¹⁰ LGA, s 42(2)(g).

¹¹ LGA, s 42(2)(h).

¹² LGA, s 48(j) and sch 7, cl 33(e).

¹³ LGA, s 48(j) and sch 7, cl 33(f) and 36.

¹⁴ LGA, s 40(1)(k) and sch 7, cl 33(g).

¹⁵ That is, any workers who do not come within the definition of 'employees' as defined in section 6 of the Employment Relations Act 2000, or are not directly employed by the local authority – for example, contractors and consultants.

- 5.2 If the Bill is to expressly permit local authority members to obtain advice from any person, it could also be helpful to consider the following matters:
- (a) Who will bear the cost of obtaining such advice – would this be at the local authority's expense, or would this cost be borne by the member personally?
 - (b) If legal advice is sought, to whom does legal privilege belong?
 - (c) To what extent would a local authority be accountable or liable for decisions made in reliance on such advice if the advice subsequently turns out to be deficient?
 - (d) What systems and processes would be needed to ensure such advice is considered when responding to information requests made under the Local Government Official Information and Meetings Act 1987?¹⁶
 - (e) What systems and processes would be needed to ensure that the chief executive can fulfil their obligations under the Local Government (System Improvements) Amendment Bill (if it is enacted), to ensure members of the local authority have access to advice obtained by local authority members?¹⁷
- 5.3 These matters need not be addressed in primary legislation, and could be dealt with at an operational level. However, we have identified them here for the attention of the Select Committee and local authorities that will become responsible for implementing this legislation if it is enacted.

Nāku noa, na



Mark Sherry
Vice-President

¹⁶ We note the Ombudsman has issued guidance which clarifies that information held by elected members in their official capacity is deemed to be held by the agency itself. Similarly, information held in their personal capacity can become official information if it is subsequently used for official purposes. See: Office of the Ombudsman *The LGOIMA for local government agencies A guide to processing requests and conducting meetings* (August 2019) at page 7.

¹⁷ Local Government (System Improvements) Amendment Bill (2025), cl 12, which inserts new section 42(2)(i) of the LGA.