SOLGM

Tuning up the engine – potential changes to local government law

A submission to the Hon Nanaia Mahuta, Minister of Local Government and the Hon Meka Whaitiri, Associate Minister of Local Government

leadinglearninglinking

FOREWORD

This document represents delivery on the commitment we made in our briefing to you as Incoming Minister and Associate Minister of Local Government.

The Society of Local Government Managers (SOLGM) considers that most of the legislation in your portfolio is not fundamentally broken. Some aspects reflect the philosophy of the Government of the day – probably the current 'service focused' purpose of local government is the most obvious example. Other aspects may have created more problems than they solved – the mayoral powers in *section 41A* being one such example. Some, such as the *Members' Interests Act 1968*, have not aged well.

With some limited exceptions the law is not in need of a rewrite. However, there is ample room for the legislative engine to receive a 'tune-up'.

We set out a range of potential changes to the legislation that falls within the ambit of your local government portfolio. Many of these changes have themes around reducing unnecessary compliance costs, improving transparency and accountability, or bringing out of date legislation into the modern era.

The result is a submission that makes 44 recommendations on six different pieces of legislation and associated regulations.

Of course, this submission is far from the end of the story as far as discussion and debate on local government legislation goes. We look forward to discussing these recommendations alongside your Government's intended programme when we meet.

I commend this submission to you.

Phil Wilson
President
SOLGM
December 2017

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LIST OF RECOMMENDATIONS

SOLGM recommends that:

Wellbeing

1. *Section 10* of the *Local Government Act 2002* be amended to recognise local government's role as a promoter of present and future social, economic, environmental and cultural wellbeing.

Mayoral powers

2. The Government review the purpose and effect of *section 41A* of the *Local Government Act 2002*.

Chief executive contracts

3. *Clauses 34(1) – 34(6)* of *schedule 7* of the *Local Government Act 2002* be repealed and replaced with provisions that:

   (a) limit the term of a chief executive's contract to five years

   (b) allow a local authority to reappoint the incumbent for a further term of up to five years on completion of contract without re-advertisement, or to advertise at its discretion, and

   (c) require the review of performance (under *clause 35* of *schedule 7*) no less than six months before the completion of any term.

Remuneration and employment policy

4. *Clause 36A, schedule 7* of the *Local Government Act 2002* and other references to the remuneration and employment policy be deleted.

Service delivery reviews

5. The statutory requirement to undertake reviews of service delivery be repealed.

Reorganisation

6. *Schedule 3* of the *Local Government Act 2002* be amended to require that all reorganisation proposals proceed to a poll within each affected local authority.

Statement of expectations for CCOs

7. The *Local Government Act 2002* be amended to empower shareholding local authorities to develop statements of expectations for their CCOs, and that where these exist they are binding on directors.

Participants' agreements for CCO shareholders

8. The *Local Government Act 2002* be amended to empower shareholding local authorities to develop Participants' Agreements and that, where these exist, they are binding on the shareholding local authorities.

Statement of expectations for CCOs

9. The *Local Government Act 2002* be amended to:

   (a) require CCOs that deliver one or more of the five groups of network infrastructure to prepare a service delivery plan, and

   (b) empower the shareholders of other CCOs to require those CCOs to prepare a service delivery plan.

Quantified limit on rates in plans and reports

10. *Sections 93C* and *101A* of the *Local Government Act 2002* be amended by removing the requirement for a statement on the quantified limit on rates in a council's long-term plan and consultation documents.

Funding impact statements

11. The requirements to produce a funding impact statement for the whole of council, and for each group of activities, be repealed and replaced with a requirement to produce a cost of service statement for each group of activities.

12 Regulations specify a common reporting format for each group of activity level statements. This may mean a separate regulation for territorial authorities and regional councils.

Fiscal prudence reporting

13. The set of fiscal prudence benchmarks be reviewed for relevance and usefulness.

Mandatory measures of non-financial performance

14. Requirements to report against measures of non-financial performance be repealed from the *Local Government Act 2002*.

Waste management plans and the LTP

15. The requirement to include an explanation of any variations between of the local authority's current Waste Management and Minimisation Plan and the LTP be deleted from the *Local Government Act 2002*.

Pre-election reports

16. All local authorities be permitted to use annual plan estimates for the financial year preceding the election date in their pre-election reports.

Infringement regulations

17. The Department of Internal Affairs develop infringement regulations. This may require an amendment to *section 259* of the *Local Government Act 2002* to clarify that a category approach to infringement offences can be applied in the regulations.

Assessments of water and sanitary services

18. Responsibility for assessing non-local authority water and sanitary services be transferred to District Health Boards, and

19. requirements for local authorities to conduct assessments of water and sanitary services be deleted from the *Local Government Act 2002*.

Public notice

20. The *Local Government Act 2002* be amended to require local authorities to include public notices on their website until the opportunity for review or appeal has lapsed.

Voting methods for subsets of voters

21. *Section 139* of the *Local Electoral Act 2001* be amended to empower regulation-making that allows:

    (a) local authorities to offer a voting method to a subset of voters

    (b) special procedures for specified classes of people in specific elections.

Selecting voting methods for subsets of voters

22. *Section 36* of the *Local Electoral Act 2001* be amended to allow local authorities to adopt different voting methods within a district.

Online voting regulations

23. The *Local Electoral Regulations 2001* be amended by adding sections governing the conduct of online elections. In 2019 the effect of these regulations would be limited to only those local authorities involved in the trial.

Mandate to improve participation

24. The *Local Electoral Act 2001* be amended to provide local authorities with a mandate to take action to improve participation in local elections.

Citizenship of candidates

25. *Section 55* of the *Local Electoral Act 2001* be amended to require candidates to furnish proof of New Zealand citizenship with nomination forms.

Access to additional information from the Electoral Roll

26. The *Electoral Act 1993* be amended to allow local authorities to access statistical information from the electoral rolls to support any actions taken to promote participation, and elector dates of birth.

Social media

27. In accordance with practice in parliamentary elections:

    (a) the definition of advertisement in the *Local Electoral Act 2001* be amended to include advertisements in any medium

    (b) the expression of personal political views on the internet be expressly excluded from the definition of electoral advertisement.

District Health Board elections

28. The District Health Board elections be separated from the local government election process.

Unpublished roll

29. The *Electoral Act 1993* be amended to provide electoral officers with access to the unpublished roll.

Supplementary roll

30. The *Electoral Act 1993* be amended to require supply of a supplementary roll before polling day.

31. Local authorities should be provided with access to the deletions file.

Ratepayer franchise

32. *Section 27* of the *Local Government Rating Act 2002* be amended to remove doubts that local authorities may use information from the rating database to administer the ratepayer franchise.

33. *Regulations 15* and *17* of the *Local Electoral Regulations 2001* be reviewed for consistency with the ratepayer's right to remove themselves from the ratepayer roll.

Transmission of nominating documents

34. The *Local Electoral Act 2001* be amended to allow for electronic transmission of nomination forms.

Electronic transmission of special votes

35. The *Local Electoral Act 2001* be amended to allow electronic transmission of special votes to and from voters who will be overseas during the election period.

Coming into office

36. The *Local Electoral Act 2001* be amended to provide that a successful candidate in a by-election comes into office on the day after the day on which the official result of the election is declared

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Members' Interests Act

37. The *Local Authority Members' Interests Act 1968* receive a first principles review.

Rates exemptions

38. The present set of rating exemptions in the *Local Government (Rating) Act 2002* be removed *in toto*.

Volumetric charging for wastewater disposal

39. *Section 19* of the *Local Government (Rating) Act 2002* be amended to allow wastewater disposal to be rated for on the basis of either the volume of water consumed or the volume of wastewater leaving a property.

Delegation of rates assessment, collection and enforcement

40. The *Local Government (Rating) Act 2002* be amended to allow a local authority to delegate rates assessment, collection and enforcement of rates.

Modernising the rates rebate administration

41. The *Rates Rebate Act 1973* be reviewed to allow applications to be made in electronic media.

Veterans' Affairs allowances and pensions and the *Rates Rebate Act*

42. The *Rates Rebate Act 1973* be amended to clarify that all impairment compensation pensions and allowances paid by Veterans' Affairs, under the *Veterans' Support Act 2014*, are not included as income when determining eligibility for a rates rebate.

Retirement villages and the *Rates Rebate Act*

43. The coverage of the *Rates Rebate Act 1973* be extended to residents of retirement villages who hold a licence to occupy.

CCO charges and the Rates Rebate Act

44. The coverage of the *Rates Rebate Act 1973* be extended to water and wastewater charges levied by a CCO.

PART ONE

Amendments to the *Local Government Act 2002*

Wellbeing

We begin our submission with the most important of the changes that we seek. This is, of course, the restoration of community wellbeing to the purpose of local government in *section 10* of the *Local Government Act 2002*.

As it now stands the purpose of local government is:

(a) to enable democratic local decision-making and action by, and on behalf of, communities, and

(b) to meet the current and future needs of communities for good-quality local infrastructure, local public services and performance of regulatory functions in a way that is most cost-effective for households and businesses.

The first part of the purpose statement has not changed since the enactment and quite clearly states the sector's role as a means through which communities make decisions and take action. But this decision-making and action has a purpose and it is therefore the second part that creates the concern.

Our previous briefing to you summarised local government's main contribution to wellbeing as:

- a supporter and developer of strong, resilient communities
- an advocate on behalf of the community – for example, to central government for resources such as more police, and to current and potential employers in the district
- a provider of the network infrastructure that sustains life and supports economic growth and transformation; and of the community infrastructure that shapes our communities as places
- a manager of the nation's natural resources, and
- a regulator of community safety and environmental sustainability.

The many and varied roles of local authorities mean there is a considerable intersection and interdependence between central and local government. Successful resolution of the challenges of the 21st century requires a shared commitment from both parties to joined up thinking and acting as a collective. In the final analysis, both central and local government are in the 'business' of promoting the wellbeing of the community.

We suggest that, as it stands, the statement of purpose is grounded in a view that local authorities are a kind of glorified utility provider (Spark, but with elections). The removal of wellbeing from the purpose of local government has created uncertainty surrounding local government's role, created new procedural tripwires for councils, and inhibited confidence in our capacity to address economic and social matters within our community.

The amendment was an attempt to constrain local government from entering activities the then Minister saw as outside the role of local government.[1] We submit that in fact there is no evidence of local authorities undertaking any large-scale new activity. Anything new is small in scale, operational in nature and is minor when placed alongside the growing infrastructural needs of our communities.

The purpose also includes a second test, that the chosen method or methods is delivered in a 'way that is most cost-effective for households and businesses'. We agree that local authorities should act in a way that is most cost-effective (that is to say the least cost means of achieving the particular objective(s) for providing a service or making a decision). However, cost-effectiveness is a mix of fact and policy judgment.

Including a test of this nature in such an overriding provision is an invitation for the disaffected to challenge decisions they don't like. To take an example, those councils that have considered paying their staff a living wage have been challenged to justify their decision against the purpose. And one (Wellington City) retreated from a decision that outside agencies that contract with Wellington City Council should pay a living wage to their staff under actual legal action.

RECOMMENDATION 1: Wellbeing

SOLGM recommends that *section 10* of the *Local Government Act 2002* be amended to recognise local government's role as a promoter of present and future social, economic, environmental and cultural wellbeing.

Mayoral powers

The 2012 set of amendments included a change to the role of the mayor. We replicate this section in its entirety below:

41A Role and powers of mayors

(1) The role of a mayor is to provide leadership to–
- *(a) the other members of the territorial authority, and*
- *(b) the people in the district of the territorial authority.*

(2) Without limiting subsection (1), it is the role of a mayor to lead the development of the territorial authority's plans (including the long-term plan and the annual plan), policies, and budgets for consideration by the members of the territorial authority.

(3) For the purposes of subsections (1) and (2), a mayor has the following powers:
- *(a) to appoint the deputy mayor:*
- *(b) to establish committees of the territorial authority:*
- *(c) to appoint the chairperson of each committee established under paragraph (b) and, for that purpose, a mayor–*
  - *(i) may make the appointment before the other members of the committee are determined, and*
  - *(ii) may appoint himself or herself.*

1 The examples of local government 'overreach' cited at the time were the inclusion of objectives relating to educational attainment in the Auckland Plan (a document the Government of the day contributed to) and another council hiring a domestic violence prevention coordinator.

(4) However, nothing in subsection (3) limits or prevents a territorial authority from–
(a) removing, in accordance with clause 18 of schedule 7, a deputy mayor appointed by the mayor under subsection (3)(a) or
(b) discharging or reconstituting, in accordance with clause 30 of schedule 7, a committee established by the mayor under subsection (3)(b) or
(c) appointing, in accordance with clause 30 of schedule 7, 1 or more committees in addition to any established by the mayor under subsection (3)(b) or
(d) discharging, in accordance with clause 31 of schedule 7, a chairperson appointed by the mayor under subsection (3)(c).

(5) A mayor is a member of each committee of a territorial authority.

(6) To avoid doubt, a mayor must not delegate any of his or her powers under subsection (3).

(7) To avoid doubt,–
(a) clause 17(1) of schedule 7 does not apply to the election of a deputy mayor of a territorial authority unless the mayor of the territorial authority declines to exercise the power in subsection (3)(a):
(b) clauses 25 and 26(3) of schedule 7 do not apply to the appointment of the chairperson of a committee of a territorial authority established under subsection (3)(b) unless the mayor of the territorial authority declines to exercise the power in subsection (3)(c) in respect of that committee.

Several Ministers in the previous government supported the so-called executive or 'strong' mayor model, that is to say a model where the mayor plays a role akin to the mayoral role in many American jurisdictions and in Greater London. The model was first introduced in Auckland as part of the Auckland amalgamation (and importantly the mayor was provided with a statutory minimum budget with which to establish an office and purchase independent advice) and introduced for the rest of the country in 2012.

Without commenting on the merits of the executive mayor model, we observe that the model described in *section 41A* is neither one thing nor the other. The mayor is still very much 'first among equals' and the exercise of powers is subject to some important checks and balances.

This mismatch between the purpose and the detail is the source of much tension within local authorities. To give some examples:

- what does it mean to provide leadership to the members of the territorial authority? We are aware of public comments from a handful of mayors that imply they interpret the provision as implying a power to direct or, on occasion, to act in their own right
- in a similar vein, what does leading the development of plans, policies and budgets mean? We understand this was intended to be the means through which the mayor would give effect to any policy commitments made during election campaigns etc. Yet this provision makes it clear that the mayor cannot act unilaterally and that all these documents require the approval of council
- the language suggests leading development of plans and policies is a requirement. In practice most choose to exercise this power in limited ways, that is to say, over the things they see as a priority. Few mayors have any budget for independent advice – remember only the Mayor of Auckland has a guaranteed budget, other mayors are dependent on council voting them support, and
- the reference to leading development of budgets has encouraged some mayors to involve themselves in operational matters.

SOLGM makes no comment on the desirability or otherwise of the executive mayor model. That is both a governance matter for local authorities and a policy decision for Ministers. But we have identified practical issues and concerns with this provision and the way local authorities are expected to operate. We submit that *section 41A* needs to be reviewed from an understanding of the role of an executive mayor and what the role is intended to achieve.

RECOMMENDATION 2: Mayoral powers

SOLGM recommends that the Government review the purpose and effect of *section 41A* of the *Local Government Act 2002*.

Chief executive contracts

Clauses 33 to *35* of *schedule 7* of the *Local Government Act 2002* regulate the employment of chief executives. Like a departmental chief executive, a local authority chief executive is appointed for a term of five years. Unlike a departmental chief executive, the council cannot reappoint a chief executive without advertising, though it can provide a one-off extension to a contract for up to two years. No less than six months out from the completion of a five year term the council must complete a review of the chief executive's employment including an assessment of performance and the incumbent's skills and attributes.

These provisions were to ensure that chief executives have no expectation that, all other things being equal, a failure to reappoint on completion of a term would give grounds for a personal grievance under employment legislation. We submit, however, that *clause 34* in its entirety is overly prescribed and all that is required for that purpose are *clauses 34(7)* and *35*, which require a review of the incumbent's performance and a determination of whether the incumbent's skills and attributes are what the council needs moving forward.

A requirement to re-advertise can make chief executives risk adverse, discourage free and frank advice and innovation and make them very conscious about offending political groups or factions on council. Local authority chief executives are in a very different position from a Departmental chief executive, in that their political masters are their employers, there is no State Services Commissioner to intercede to (for example) remind elected members that advice should be politically neutral.

Increased job uncertainty may decrease the number of qualified and experienced persons prepared to apply for a chief executive position. In some small, rural local authorities it is difficult to attract and retain managers and the fixed term regime is a further disincentive to apply. Economic theory tells us that uncertainties of this nature will be reflected in the salary demands as a 'risk premium' is introduced into the process.

The nature of the employment process also makes it more difficult to retain chief executives. In the last five years 57 of the 78 local authorities have changed their chief executives – and we are aware that at least one of the remainder will retire in the next few months.

Quite apart from these factors, the requirement to re-advertise creates an additional (and quite unnecessary) cost on communities. A council that does nothing other than advertise can expect a cost in the low five figures, and a council that gets outside assistance with a search can expect a bill of around $50,000 (a very significant impost for a smaller community).

Last but not least, this provision is inconsistent with the general intent of the *Local Government Act*. Local authorities are empowered to promote community wellbeing, and in pursuit of that purpose make day to day decisions involving millions of dollars (including powers to tax, borrow, build or acquire assets). How does this sit with a provision that effectively says that they cannot be trusted to assess their chief executive's performance and attributes?

RECOMMENDATION 3: Chief executive contracts

SOLGM recommends that *clauses 34(1) – 34(6)* of *schedule 7* of the *Local Government Act 2002* be repealed and replaced with provisions that:

(a) limit the term of a chief executive's contract to five years

(b) allow a local authority to reappoint the incumbent for a further term of up to five years on completion of contract without re-advertisement, or to advertise at its discretion, and

(c) require the review of performance (under clause 35 of schedule 7) no less than six months before the completion of any term

Remuneration and employment policy

The Better Local Government reforms of 2012 provided local authorities with the powers to set a policy on remuneration and staffing.

The 'case' for this particular reform was based on an assertion that local government salaries had increased at more than twice the rate of salaries elsewhere in the economy. We were never able to substantiate this claim from any independent source and note this claim appeared only in the Cabinet paper and not in any document that officials prepared. Our analysis, based on the Labour Cost Index prepared by Statistics New Zealand, suggested that the movements in all salary and wage costs were little different – 14 percent in local government and 13.4 percent in central government.[2]

We do not believe the policy intent has been captured in the legislation. As currently worded the provision is vague.

A local authority may adopt a policy that sets out the policies of the local authority in relation to–
(a) employee staffing levels, and
(b) the remuneration of employees.[3]

Worded in this way, this appears to allow the council to adopt policies that sit below the 'whole of council' level. This invites elected members to attempt to specify the number of employees who work in each group of council (e.g. there will be no more than *x* rates clerks or *z* librarians) or specify remuneration of individual employees.

2 There has been a slight divergence over the past five years – local government salaries have increased 9 percent, central government 7 percent. We do not see any evidence to back up a claim that local government salaries are 'out of control'.
3 *Clause 36A, Schedule 7* of the *Local Government Act 2002*.

We have been aware of circumstances where elected members have threatened to, use these provisions to set the salaries of the second tier management.

We submit that local authorities already set a spending limit on remuneration (and other inputs for that matter) in their long-term and annual plans. These plans are subject to consultation (unlike the remuneration policy). We add that specifying staff numbers is a very blunt and largely ineffective way of controlling inputs, as officials may turn to consultants to meet council expectations, at greater cost. Officials identified this risk in the Regulatory Impact Statement (RIS) that accompanied the *Bill*.

To the extent that elected members are able to exercise a right of veto over staffing and employment decisions, this will have the effect of blurring the line between governance and management established in the reforms of 1989. The 'second-order impact' of this policy setting is likely to include more difficulty in attracting quality applicants for chief executive and an increase in employment disputes.

When this was passing through Parliament we invited the Select Committee to remove the provision, and that remains our position.

RECOMMENDATION 4: Remuneration and employment policy

SOLGM recommends that *clause 36A*, *schedule 7* of the *Local Government Act 2002* and other references to the remuneration and staffing policy be deleted.

Reviews of service delivery

"There are always efficiency gains to be made."

A senior local government practitioner

The 2014 reforms of the *Local Government Act* included a new requirement to review the cost-effectiveness of current arrangements for meeting the needs of communities within its district or region for good-quality local infrastructure, local public services and performance of regulatory functions. These are colloquially referred to as '*section 17A* reviews'.

This amendment was intended to provide local authorities with a legislative direction to review their service delivery arrangements to find efficiency gains. No reasonable person can argue that bodies that spend public money should not be looking for opportunities to deliver services more efficiently.

This is one of the reasons why shared capability arrangements are so prevalent in the sector – the average local authority is involved in six of these and some report being involved in as many as 50. It is a major driver behind the move to make more services available online and to undertake improvements to other business processes. And we have yet to see the organisational restructure that has not cited efficiency gains as a motivating factor.

We agree that local authorities should review the cost-effectiveness of their service delivery

arrangements from time to time. However the *section 17A* process is specified in a very detailed manner including when reviews are undertaken, what options must be considered and what happens if the review determines that governance and delivery functions should be separated.

In specifying to this level of detail the *Act* has created a potential procedural tripwire for local authorities and encouraged reviewing for its own sake. We do not think either was intended as both are the very antithesis of the outcome this provision was attempting to generate.

We submit that the principles of local government in *section 14* of the *Act* already provide local authorities with legislative signals that they should be looking for opportunities to improve. *Section 14(1)(e)* states that a local authority should *actively seek to collaborate and co-operate with other local authorities and bodies to improve the effectiveness and efficiency with which it achieves its identified priorities and desired outcomes*. Reviews of this nature *ensure prudent stewardship and the efficient and effective use of* (the local authority's) *resources* as per *section 14(1)(g)*.

An alternative option might be to retain the requirement but remove much of the over-specification. Undertaking a review is a 'decision' for the purpose of *section 78*. Local authorities are under an obligation to identify and consider the reasonably practicable options. All that would be necessary is:

(a) a requirement to review services where the local authority considers that the benefits of a review would outweigh the costs of the review

(b) a requirement to consider the costs and benefits of collaborating with other local authorities to undertake the review.

RECOMMENDATION 5: Service delivery reviews

That the statutory requirement to undertake reviews of service delivery be repealed.

Reorganisation

We note that the Government has decided to reinstate the *Local Government Amendment Bill (No 2)* on the Parliamentary agenda. This *Bill* gave effect to the previous Government's Better Local Services reform programme. The Society of Local Government Managers (SOLGM) worked with Local Government New Zealand (LGNZ) to advocate for and achieve some significant change to the policy settings that underpinned the *Bill*. We devoted much time and energy to addressing the *Bill*'s many technical flaws. We support the decision to reinstate the *Bill* as we consider there are some matters in this *Bill* that are worth pursuing.

The first of these is that the *Bill* as introduced undoes one of the matters from the so-called Better Local Government reforms of the Hon Dr Nick Smith. One of the fundamental rights of local communities under the *Local Government Act 2002* was that reorganisation proposals

(such as amalgamation) had to go to a poll in each affected area. The 2012 reforms changed the provisions governing reorganisation so that a poll would only happen if there were a petition signed by more than 10 percent of the affected area (in the case of an amalgamation the affected area was defined as the total of all local authorities involved in the proposed amalgamation).[4]

As it stands the *Bill* undoes this and would make a legislative presumption that all reorganisations proceed to a poll. We note that the poll is still of the total affected area rather than in each affected area. This is an improvement over the current position, but is still not the most democratic way of determining the outcome of a reorganisation proposal. We suggest that an amalgamation that does not have the support in each of the affected communities creates an immediate confidence and trust 'barrier' for any new council. Our recommendation, shown below, seems to sit well with the position outlined in your Government's confidence and supply agreement with the Green Party, which refers to *"greater public participation, openness and transparency"*.[5]

RECOMMENDATION 6: Reorganisation

SOLGM recommends that *schedule 3* of the *Local Government Act 2002* be amended to require that all reorganisation proposals proceed to a poll within each affected local authority.

Governance of council organisations

The *Local Government Amendment Bill* contained a number of provisions to strengthen the governance framework of council organisations, particularly the council controlled organisations (CCOs). We consider that several of these are worthy of further investigation, especially as they relate to CCOs that are owned by more than one local authority.

SOLGM sees an increasing move in future towards delivery of services by CCOs with multiple ownership. Our concern with the *Local Government Amendment Bill*, as it began the Parliamentary process, was that it gave an external agency the power to mandate reform and that the reform centred on the corporate CCO as 'the' model for reform.

The Select Committee process for the *Bill* provided a substantive and genuine attempt to address the concerns we expressed in regards to the accountability provisions for the *Bill*. These form the basis for what is recommended below.

Statement of expectations

Some local authorities provide their CCOs with letters of expectation. These are typically used to set some parameters around how the CCO delivers services and around relationships (such as 'no surprises').

4 Both the reorganisations that have been proposed under this legislation have gone to polls. Voting in the proposed Wairarapa reorganisation was about to open at the time of writing. In the only completed reorganisation, the voters of Hawkes Bay rejected an amalgamation by a vote of 66 percent to 34 percent, despite the voters of one constituent territorial voting for the proposal.

5 New Zealand Labour Party (2017), *Confidence and Supply Agreement between the New Zealand Labour Party and the Green Party of Aotearoa New Zealand*, page 6.

These documents carry no legal weight –in the final analysis the sanction for a failure to meet a council's expectations would be the dismissal of the directors.

The *Bill* recognises this by requiring the shareholders to prepare statements of expectation. These documents would allow local authorities to set expectations with regards to the shareholding local authorities, the community and Māori, as well as expectations regarding alignment with the shareholders' statutory obligations and agreements with third parties. This statement could also set out expectations with regard to community engagement and the way in which the CCO delivers services.

We submit that a statement of expectations would be a useful addition to the suite of tools local authorities have for governing CCOs. They may not be appropriate in all circumstances (for example where the CCO is small) so we recommend that these be discretionary, and that where a statement of expectations is in effect, the directors of the CCO must adhere to its requirements.

These will need some tempering to ensure that a statement of expectations cannot be used to override a director's responsibilities to a company.

Recommendation 7: Statement of expectations for CCOs

SOLGM recommends that the *Local Government Act 2002* be amended to empower shareholding local authorities to develop statements of expectations for their CCOs, and that where these exist they are binding on directors.

Participants' agreements

The Select Committee recommended adding this provision to the *Bill*. It aimed to address the concerns of smaller local authorities that their interests could be subsumed by the interests of a larger local authority, for example if the road network and activities in Ōpōtiki and Kawerau were combined with those in Whakatane.

Participants' Agreements would set out an agreed position on the mechanics of governing a CCO including:

- processes for board appointments
- processes for monitoring board appointments
- the composition and operation of boards of directors, including the number of members each shareholder gets to appoint, what delegations the committee has and whether any particular decisions need a supermajority.

These agreements are a means for resolving disagreements between shareholding local authorities. As with the statement of expectations, we submit these should be optional, but binding where they exist.

RECOMMENDATION 8: Participants' Agreements for CCO Shareholders

SOLGM recommends that the *Local Government Act 2002* be amended to empower shareholding local authorities to develop Participants' Agreements and that, where these exist, they are binding on the shareholding local authorities.

Service delivery plans

SOLGM supported the *Local Government Amendment Bill* requirements that substantive CCOs prepare a service delivery plan (effectively a CCO equivalent of a long-term plan). We see this both as a means of ensuring the CCO retains a focus on delivering services sustainably and as an input into the parent local authorities' long-term plans.

RECOMMENDATION 9: Statement of expectations for CCOs

SOLGM recommends that the *Local Government Act 2002* be amended to:

(a) require CCOs that deliver one or more of the five groups of network infrastructure to prepare a service delivery plan, and

(b) empower the shareholders of other types of CCOs to require those CCOs to prepare a service delivery plan.

Contents of plans and reports

The 2014 set of amendments made a substantial amount of change to the consultation processes for a long-term plan and introduced the consultation document as the primary basis for engaging with the community. These amendments also made some other changes which contributed to the development of robust plans and therefore the sustainability of local services.

We assisted the Department of Internal Affairs in developing these provisions and were therefore pleased to support these provisions when they reached Parliament. These are a great example of what can be achieved when we work together proactively. We note that your party also voted for this legislation.

Almost without exception the sector reported benefits for the planning process and we received generally positive feedback from the end users of these plans. We make three minor recommendations for changes to the content below.

Quantified limits on rates

Local authorities must include a financial strategy in their long-term plans. This includes self-set quantified limits on borrowing, rates increases and an absolute limit on rates. These were intended to form part of the financial controls within a local authority. It is unclear what legislators expected from the latter limit as few local authorities have been able to develop any absolute limit on rates that acts as a meaningful control. For example, a common limit is that rates will form no more than a specified percentage of total revenue. In practice, the public, and most elected members, focus on the increase in rates –which is also reflected in the Department of Internal Affairs' own fiscal prudence measures.

References to the limit on rates can be found in *sections 93C* and *101A* of the *Local Government Act 2002*. We submit both references should be removed.

RECOMMENDATION 10: Quantified limit on rates in plans and reports

SOLGM recommends that *sections 93C* and *101A* of the *Local Government Act 2002* be amended by removing the requirement for a statement on the quantified limit on rates in a council's long-term plan and consultation documents.

Funding impact statements

Local authorities are required to include two funding impact statements (FIS) in their plans and reports. The first shows flows of funds into and out of the local authority as a whole, together with a set of disclosures about rates. The second level of FIS shows flows of funds into and out of a group of activities (such as roads and footpaths).

SOLGM has no concerns with the disclosure requirements for rates. Indeed one of our more frequent pieces of guidance to local authorities is about the need to improve practice around these disclosures.

We are less convinced of the value of the remainder of funding impact statements (FIS). The best rationale we can find on record is a view that

"Most ratepayers do not understand the principles of accrual accounting and therefore find council accounts incomprehensible. From the ratepayer's viewpoint, the most useful way to think about council finances is to focus on funding, using a stocks and flows approach."[6]

The presentation of these documents is tightly prescribed by the *Local Authorities (Financial Reporting and Prudence) Regulations*. The FIS is prepared on a subtly different basis to other financial information. The measurement and recognition principles are identical to those that apply under Generally Accepted Accounting Practice (GAAP). However the FIS includes only monetary transactions – so transactions in kind (e.g. vested assets) and transactions that only adjust the value of assets and liabilities (e.g. depreciation) are not included.

6 Department of Internal Affairs (2009), *Regulatory Impact Statement: Improving Local Government Transparency, Accountability and Financial Management*, page 13.

There is some merit in the claim that ratepayers have some difficulties in understanding local authority accounts. Anyone who has ever tried to explain that a surplus in a Statement of Comprehensive Income does not necessarily mean there is cash for a rate cut will confirm this. We would agree that financial reporting may act as an impediment rather than an aide to transparency in financial dealings.

We are unconvinced that the application of accrual accounting principles is the sole or even the primary cause of the lack of transparency in financial reports. Our view is that having two sets of financial information which are prepared on a slightly different basis[7] does not provide transparency for the reader.

Local authority finance managers and Long-Term Plan (LTP) project managers have reported there have been no lesser or greater levels of interest in financial information as a result of producing the FIS. Several report there was some confusion as to why reporting formats had changed or why their local authority had prepared a second set of financial statements. For example:

> *"We didn't receive any submissions on the information in the FIS or quoting information in the FIS. We did however have a member of our community ring up our* (local TV news) *show and ask why they were set out differently from previous years cost of service statements, how they compared with financials that are prepared subject to standard accounting practices and why we had changed them. He felt that they didn't offer consistency with what we had previously done (although noting we had provided the 2011/12 comparisons) and that creating things in two different formats, such as we did was not helpful to the community."*
>
> An LTP project manager

> *"I was contacted by a couple of our elected members who complained that they couldn't understand the FIS at all. That bothers me just as much as the public not understanding it (in fact more so!)."*
>
> A finance manager in a small local authority

We are sympathetic to claims that more could be done to promote plain English financial reporting. Preparing a second set of financial information on a different basis does nothing to promote this objective.

We agree promoting greater comparability in financial reporting between councils would promote greater transparency for residents and ratepayers. The Financial Reporting Regulations took a step in this direction by requiring standard presentation of rates, subsidies and development contributions. We submit that standardisation in financial reporting at the groups of activities level is a desirable objective, and note the Auditor-General has previously recommended formats for such statements (known as cost of service statements) that serve as a place to start. Separate regulation may be needed for regional councils.

7 Local authorities must present a funding impact statement for the council and a GAAP based Statement of Comprehensive Income. Local authorities must also present funding impact statements for each group of activities, but many also chose to present the same GAAP based "cost of service statements" they always had.

RECOMMENDATIONS 11 and 12: Funding impact statements:

SOLGM recommends that:

11. **the requirements to produce a funding impact statement for the whole of council, and for each group of activities, be repealed and replaced with a requirement to produce a cost of service statement for each group of activities.**

12. **regulations specify a common reporting format for each group of activity level statements. This may mean a separate regulation for territorial authorities and regional councils.**

Fiscal prudence reporting

The other element of the 2014 regulations is a requirement to report planned and intended performance against a set of seven benchmarks of fiscal prudence. The format for reporting is highly prescribed – right down to the colour of the bars in bar graphs presenting these data, and the wording of the commentary that presents these data.

The benchmarks are intended to act as indicators to identify those local authorities which are not, or may not be, managing their financial dealings prudently. Not all of these indicators are useful for this purpose, for example two of the seven indicators are simply a report against the local authorities' self-set limits on rates and debt, and can be manipulated. Some of the indicators are only relevant for territorial authorities.

We are not opposed to a set of benchmarks but recommend that the existing set be reviewed.

RECOMMENDATION 13: Fiscal Prudence Reporting

13. **SOLGM recommends that the set of fiscal prudence benchmarks be reviewed for relevance and usefulness.**

Measures of non-financial performance

Since 2014 local authorities have been required to report against a suite of 17 mandatory measures of non-financial performance relating to the five groups of network infrastructure in their long-term plans, annual plans and reports.[8]

8 Roads and footpaths, drinking water, wastewater disposal, stormwater disposal and flood and river control.

In the words of the then Minister (the Hon Rodney Hide) these measures were designed to *'encourage local authorities to focus on core services'*. These measures were designed with the intent that they focus local authority spending on some activities by making the means for comparisons available to the public.

However, our view is that poorly designed systems for comparing performance move the focus away from learning and towards managing one's 'position on the table'. Poor comparisons can focus local authorities on particular activities rather than meaningful outcomes. They can discourage innovation by making local authorities averse to making change out of fear that their 'position on the table' might suffer.

We also say that a local authority's accountability is to the local community, not to Ministers. Local authorities are not an arm of the Crown. Ministers have only a limited purchase interest in local government (and this is well catered for in our reporting to NZTA) and no ownership interest at all.

We have concerns about the relevance and usefulness of some of the measures that sit within the present regime. Some incentivise activity for activitys' sake –for example, one measure requires disclosure of the percentage of the road network that is resurfaced each year. Many of the measures are unclear. Some incorporate aspects that are wholly or partly beyond a local authority's control – for example, a local authority must disclose the number of flooding events (we were previously unaware that local authorities have responsibility for the weather).

RECOMMENDATION 14: Mandatory measures of non-financial performance

SOLGM recommends that requirements to report against measures of non-financial performance be repealed from the *Local Government Act 2002*.

Waste management and minimisation plans

Local authorities must include a statement explaining any variations between their current Waste Management and Minimisation Plan (WMMP) and the LTP. While the WMMP is an important document, it is no more important than other statutory planning instruments such as a District Plan. We see no reason why detail about the WMMP is of such importance that it deserves to be singled out in an LTP when many other documents are not.

RECOMMENDATION 15: Waste Management and Minimisation Plans and the LTP

SOLGM recommends that the requirement to include an explanation of any variations between the local authority's current Waste Management and Minimisation Plan and the LTP be deleted from the *Local Government Act 2002*.

Pre-election reports

In 2010 Parliament added a new requirement to the planning and reporting requirements of the *Local Government Act 2002*. The purpose of the pre-election report (PER) is to put the financial stewardship of the outgoing local authority and its key spending issues 'front and centre' in the election debates. The document contains:

- historic financial statements (the pre-election reports released in 2019 will contain historic financial information for the 2016/17 and 2017/18 financial years). These data come from annual reports
- an estimated financial out-turn for the financial year preceding the election year (that is, the pre-election reports released in 2019 will have an estimated out-turn for the 2018/19 financial year)[9],[10]
- a report on the local authority's performance against the financial limits and targets set in its financial strategy
- forecast financial information for the three years following the election year. This information comes from the local authority's long-term plan.[11] A 2019 PER will contain forecast financial information for the 2020/21, 2021/22 and 2022/23 financial years
- information about the major projects planned for the three years following the election year. This information comes from the local authority's long-term plan.

For the most part, the document draws together existing information into a single document. Few local authorities have identified significant issues with the production of PER in 2016 (or in 2013), with few indicating that the requirement created significant additional costs for the local authority. The biggest concern that most express is around the requirement to include an unaudited estimate of the financial out-turn for the year prior to election year, especially as the actual out-turn will be included in annual reports that are generally released in the weeks after local elections. Numbers can change significantly if, for example, an asset value changes significantly, meaning there is the potential for incorrect information to be provided.

SOLGM is unconvinced that PER requirements have achieved their purpose. Where the media cover these documents at all, the reporting tends to largely replicate the content of local authority media releases. There has been no substantial increase in the number of candidates choosing to stand or in voter turnout. Issues such as the major projects will have been signalled and been the subject of community engagement during the LTP process or will already be well-known in the community. Requirements to report on financial stewardship have now been incorporated elsewhere in the local accountability framework through the Local Government Financial Reporting and Prudence Regulations 2014.[12]

9 Local authorities with a usually resident population of 20,000 or less have the option of substituting information from their annual plan. SOLGM's guide on PER recommends that local authorities that have this option make use of it.

10 The local authority financial year ends on 30 June. With the due date for PER being two weeks before nomination day (i.e. usually at the end of July), there is no opportunity for local authorities to prepare actual information and get this audited.

11 Strangely, there is no requirement to include information for the election year in a PER. However, almost all local authorities included this information.

12 These regulations require local authorities to report their planned and actual performance against a set of parameters and benchmarks of fiscal prudence. Among other things this includes a report on compliance with the limits on rates and debt in the local authority's financial strategy.

The PER does have benefits as a single 'source of truth' which local authorities can use as source material for their own information campaigns (including responding to any factual inaccuracies that come up during the campaign). The PER serves as a 'quick reference guide' to key financial and non-financial information that an elector who intends to cast an informed vote could use. SOLGM does not consider the PER to be a particularly onerous or costly requirement, but a slight streamlining of the requirement to allow all local authorities to use the annual plan forecasts for the year preceding the election year would reduce the cost still further. These numbers are used as the basis for setting rates so should be reliable.

RECOMMENDATION 16: Pre-election reports

SOLGM recommends that all local authorities be permitted to use annual plan estimates for the financial year preceding the election date in their pre-election reports.

Infringements under the *Local Government Act*

The *Local Government Act 2002* provides for the making of regulations to prescribe which breaches of bylaws are infringement offences, with associated infringement fees. Without these regulations a breach of a bylaw is not considered an offence and no infringement fees are payable. Consequently this means that other breaches of bylaws under the *Local Government Act* must either be prosecuted through the courts or ignored altogether. The former is a time-consuming and costly enforcement tool, which makes prosecution inappropriate for all but the most significant of breaches.

Regulations prescribing infringement offences have not proceeded in part due to difficulty with the wording of *section 259* of the *Act*, which sets the scope of the regulation making power. As council bylaws differ to suit their local situation, the possible breaches of bylaws will differ between local authorities. The practical solution is for the infringement regulations to be based on categories of offences, rather than specifying every offence in every council bylaw.

We support a category approach and understand that Crown Law has confirmed that a category approach can be taken under *section 259*, but that this is not supported by other government advisers. Clarification on implementation of *section 259* would assist.

An alternative would be to amend *section 259* to specify any bylaw breach as an infringement offence (this is the approach in the *Dog Control Act 1996*) or to amend *section 259* to enable local authorities to specify their own infringement offences (this is the approach in the *Litter Act 1979*).

RECOMMENDATION 17: Infringement regulations

SOLGM recommends that the Department of Internal Affairs develop infringement regulations. This may require an amendment to *section 259* of the *Local Government Act 2002* to clarify that a category approach to infringement offences can be applied in the regulations.

Assessments of water and sanitary services

These sections require territorial authorities to undertake an assessment of the state of all water and sanitary services (not just those which are publicly owned/operated) within the district. This includes the following:

- water supply
- wastewater disposal
- "works for the collection and disposal of refuse, nightsoil and other offensive matter"[13]
- public toilets and
- cemeteries/crematoria.

The purpose of an assessment under *section 125* is to assess, from a public health perspective, the adequacy of water and other sanitary services available to communities within a territorial authority's district, in light of:

- the health risks to communities arising from any absence of or deficiency in, water or other sanitary service
- the quality of services currently available to communities within the district
- the current and estimated future demands for such services
- the extent to which drinking water provided by water supply services meets applicable regulatory standards, and
- the actual or potential consequences of stormwater and sewage discharges within the district.

The document includes an assessment of the:

- quantity and quality of the supply (whether public or private) of services provided
- likely future demand for the services and the options for meeting those demands (including any role the territorial authority has), and
- risks from the provision or non-provision of any service.

This is a transfer of responsibility from central government without compensatory resourcing. The assessment must include services not owned/operated by the local authority, for which there is not necessarily any asset management, growth forecasts and the like from which to draw information to perform the assessment.

13 *Section 25 (c) Health Act 1956*

The only statement of policy rationale for this requirement which we are aware of appears in the Select Committee report which noted that:
"Territorial authorities have a duty under the Health Act 1956 to improve, promote and protect public health within their districts. This requirement implies that councils need to identify the essential service needs of their communities and either provide those services themselves or maintain an overview if the service is provided by others. The Bill makes this role explicit."[14]

and

"*We consider that the assessment and reporting provisions bring the information on water and sanitary services into the public domain . . . This is in accordance with the Government's statement of policy direction which says communities should have greater scope to make their own choices about what local authorities do and how they do it.*"[15]"

While it is correct to say that local authorities have the *Health Act* responsibility identified above, the same is equally true of the Ministry of Health (see *section 3A* of the *Health Act 1956*) and of the District Health Boards (DHBs) (*section 22(1)(a)* of the *New Zealand Public Health and Disability Act 2000*). *Section 22(1)(h)* also sets out another objective for DHBs, namely:
"to foster community participation in health improvement, and in planning for the provision of services and for significant changes to the provision of services".

In and of itself the *Health Act 1956* offers no justification for the allocation of this responsibility to local government.

Further, the obligations and powers placed on DHBs seem to suggest that assessing the state of water and sanitary services seems to fit more within the scope of these organisations. *Section 23(1)(g)* of the *New Zealand Public Health and Disability Act 2001* requires DHBs:
"to regularly investigate, assess and monitor the health status of its resident population, any factors that the DHB believes may adversely affect the health status of that population and the needs of that population for services".

An assessment of water and sanitary services sits more logically inside what appears to be a wider process of identifying health needs and risks. While we do not disagree that territorial authorities will hold relevant information (such as growth forecasts, water quality indices and the like) this is best viewed as an input to the process, and not as an excuse to place this requirement on local authorities. DHBs appear to have a wider and more appropriate range of powers regarding the collection of information to prepare an assessment.

RECOMMENDATIONS 18 and 19: Assessments of water and sanitary services

SOLGM recommends that:

18. responsibility for assessing non-local authority water and sanitary services be transferred to District Health Boards, and

19. requirements for local authorities to conduct assessments of water and sanitary services be deleted from the *Local Government Act 2002*.

14 Local Government and Environment Select Committee 2002, Report on the *Local Government Bill*, page 26.
15 Local Government and Environment Select Committee 2002, pp 26-27

Public notice

One of the means through which local authorities advise the public of certain decisions or intentions to act, or of certain rights (such as the right to demand a poll on the electoral system), is by giving public notice. Public notice under the *Local Electoral Act* (*LEA*) replicates the provisions of the *Local Government Act* which requires publication in:

(i) one or more daily newspapers circulating in the region or district of the local authority, or

(ii) one or more other newspapers that have at least an equivalent circulation in that region or district to the daily newspapers circulating in that region or district.

Local authorities may, but do not have to, supplement the above by giving notice at other times and places as they see fit. Most newspapers have been experiencing steady decline in their hard copy circulation, to the point where public notices which are only in newspapers will be ineffective.

The *Local Government Regulatory Systems Bill* includes a proposal to amend the *Local Government Act 2002* and the *Local Government Official Information and Meetings Act 1987* to include a mandatory requirement for councils to publish public notices on their website until any opportunity for review or appeal has lapsed. This is additional to publication in newspapers and is seen as a transitional step. We support this proposal.

RECOMMENDATION 20: Public notice

That the *Local Government Act 2002* be amended to require local authorities to include public notices on their website until the opportunity for review or appeal has lapsed.

PART TWO

Amendments to the *Local Electoral Act* and *Local Electoral Regulations*

Urgent local electoral amendments

Our November briefing to you advised that SOLGM, Local Government New Zealand (LGNZ) and the Department of Internal Affairs have recently given consideration to a trial of online voting at the 2019 Local Electoral elections. This consideration includes identification of the policy and regulatory changes necessary to support a trial.

Section 5 of the *Local Electoral Act 2001* (*LEA*) already empowers online voting as a voting method. The *LEA* is written to be neutral between voting methods and most of the detail governing the operation of voting methods is contained in the *Local Electoral Regulations 2001* (*LER*). As a consequence we have identified only two required amendments to the *LEA*.

Subsets of voters

We regard both of the following amendments to the regulation making powers of *section 139* of the *LEA* to be essential in order for a successful trial of online voting at the 2019 election to occur and recommend that these proceed with urgency.

Section 139(1)(c) of the *LEA* authorises the making of regulations to authorise the use of one or more voting methods in ..."any specified election or poll." The interpretation of election, and the expectation that electors use the same voting method for all concurrent elections, means that regulations cannot currently authorise a voting method for a (triennial) election over less than a full district.

The regulation should be amended to enable an online volting trial to involve a subset of the total number of voters.

We have two reasons for seeking this amendment. While the implementation of online voting will take place in a staged and sequential fashion, the final steps of a trial will be in a politically binding election. An amendment that would allow for trialling over a subset of electors in a local authority would lower the risks involved in participating in a trial. Trialling over a subset of voters would also lower the total cost of the trial (but not the cost per voter).

The exclusion of Auckland Council from the 2016 preparations for a trial created a significant practical impediment to that project. The Government of the time raised the concern that the participation of a local authority covering around a million electors might impact on the representativeness of the trial. Allowing the trial over a subset of Auckland voters is a pragmatic step that would alleviate this concern.

Discussions with those councils currently involved in the work preparatory to an online trial have identified the following as potential subsets:

- out of district voters
- voters with disabilities or
- voters within the electoral divisions of a local authority such as a ward, community board or local board.

Section 139(1)(e) authorises regulations that would allow the use of special procedures for casting votes by any specified class of person (e.g. persons with specified disabilities and those overseas). However, it is not clear that such regulations can be limited to apply only in specific elections, rather than to all persons within a specified class.

Rather than amending these provisions to provide this flexibility generically and on an ongoing basis, we would prefer the Government to add clear and specific regulation making powers tailored to the authorisation of a trial of a voting method. At this stage we do not intend that the new provision be limited to trials within any particular period.

RECOMMENDATION 21: Voting Methods for Subsets of Voters

SOLGM recommends that *section 139* of the *Local Electoral Act 2001* be amended to empower regulation-making that allows:

(a) local authorities to offer a voting method to a subset of voters

(b) special procedures for specified classes of people in specific elections.

Selection of voting methods

Section 36 provides for territorial authorities (in the case of triennial elections) to adopt (by resolution) the voting method to be used for the purposes of a particular election or poll (and all others in the district at the same time). In order to allow a trial over only part of a district (or a different subset of electors), this provision will also need to be amended to allow the adoption of different (authorised) voting methods within a district.

RECOMMENDATION 22: Selecting voting methods for subsets of voters

SOLGM recommends that *section 36* of the *Local Electoral Act 2001* be amended to allow local authorities to adopt different voting methods within a district.

Local Electoral Regulations

It is the absence of regulations governing online voting that renders this method unavailable. If a trial of online voting is to occur in 2019 a set of regulations will be required. We are working with your officials and with LGNZ to develop a set of service delivery, security and policy standards that would inform the development of these regulations. In 2019 the effect of these regulations would be limited to only those local authorities involved in the trial.

RECOMMENDATION 23: Online voting regulations

SOLGM recommends that the *Local Electoral Regulations 2001* be amended by adding sections governing the conduct of online elections. In 2019 the effect of these regulations would be limited to only those local authorities involved in the trial.

Other local electoral matters

Mandate to improve participation

The *Local Electoral Act* (*LEA*) sets the framework through which voters participate in local elections. The *LEA* does not directly recognise that participation is desirable. It is *section 4C(a)* of the *Electoral Act 1993* which makes facilitation of participation in a parliamentary democracy one of the core objectives of the Electoral Commission.

SOLGM is aware that some local authorities and electoral officers cite the lack of a legislative mandate as a justification for not undertaking activities such as better promotion of the election period.

Yet others have undertaken quite extensive activity in this area. For example, Christchurch City Council developed CELECT, an online application designed to provide residents with customised, relevant information about the candidates standing in their area, and when and how to vote. Auckland Council developed a communications and engagement campaign around the theme of 'love where you live' which included:

- an elections awareness programme
- community engagement aimed at youth and diverse communities through the 'Love Auckland' campaign and Kids Voting
- improved accessibility – 'going to the people' through online tools, the location of ballot boxes and assisted voting for the visually impaired.

During 2016 the Department of Internal Affairs engaged with us around the content of a proposed *Local Government Regulatory Systems Bill*. Cabinet's decisions about the content of this *Bill* are in the public domain and include a proposal to empower local authorities to take steps to improve participation. We support this proposal.

One of the key aspects of the proposal is to place the mandate to improve voter participation on local authorities as opposed to the electoral officer and their staff. While the electoral officer is responsible for developing and implementing the overall plan for each local election, he or she must do so within the budget set by the local authority. Placing the

mandate on the electoral officer leaves them with a mandate but only limited means of ensuring they can carry the mandate out.

RECOMMENDATION 24: Mandate to improve participation

SOLGM recommends that the *Local Electoral Act 2001* be amended to provide local authorities with a mandate to take action to improve participation in local elections.

Citizenship of candidates

In recent months we have become aware of two instances of candidates having been elected to office who were not New Zealand citizens and therefore were ineligible to stand.[16] It would be inappropriate for us to comment on the facts of these cases given that one of these people is under Police investigation at the time of writing.

Section 25 of the *Local Electoral Act* is very clear that a candidate must not only be a registered elector, but must also be a New Zealand citizen. The nomination form requires the candidate to attest to their holding New Zealand citizenship. *Section 21* makes it an offence to nominate a candidate while knowing that person is ineligible to hold office or for someone to accept a nomination while knowing they are ineligible to hold office. The offence is punishable by a maximum fine of $2000.

The 2013 Census noted that around 1.1 million people who are resident in New Zealand were not born here. At that time this was equivalent to just over a quarter of the population. We are a nation with a migrant population so we can expect that this issue will not go away.

The nomination form used by most local authorities indicates that candidates may be asked to furnish proof that they are New Zealand citizens. The form also makes it clear that acceptable proof includes a New Zealand Passport, New Zealand Birth Certificate or other New Zealand citizenship documents, such as a Certificate of Citizenship or Determination of Citizenship.

It appears some electoral officers rely on the candidate certifying their eligibility in two places and signing the form, as well as relying on the legal sanction and on loss of office as the control.

The nomination form for the 2017 general election appears to require a similar certification. It also requires candidates born outside New Zealand to furnish proof of citizenship and helpfully directs candidates who are unsure about their status that they should contact the Department of Internal Affairs. On one level there is a practice issue which we will resolve by asking candidates to furnish proof.

16 We are also aware of an historic case where a person was elected mayor of a council and then disqualified due to ineligibility. Parliament also had its own instance of this in 2002, when Kelly Chal was declared elected as a list MP and subsequently discovered not to be a New Zealand citizen.

However, this requirement could be made a lot more certain, especially in circumstances where a candidate refuses to produce proof. We recommend an amendment to *section 55* to require candidates to furnish proof that they are a New Zealand citizen.

RECOMMENDATION 25: Citizenship of candidates

SOLGM recommends that *section 55* of the *Local Electoral Act 2001* be amended to require candidates to furnish proof of New Zealand citizenship with nomination forms.

Access to additional information from the Electoral Roll

Having access to statistical data associated with the electoral roll, such as age groups of electors, would be helpful when planning election awareness campaigns. Currently the *Electoral Act* only allows this information to be supplied for research into scientific or health matters. It would also better enable the evaluation of any online voting trial.

The 2014 report of the Online Voting Working Group noted that access to date of birth information would also provide a secure method of voter identification because an elector's date of birth is not usually widely known outside of family and friends.

RECOMMENDATION 26: Access to additional information from the Electoral Roll

SOLGM recommends that the *Electoral Act 1993* be amended to allow local authorities to access statistical information from the electoral rolls to support any actions taken to promote participation, and elector dates of birth.

Social media and elections

When the *Local Electoral Act* (*LEA*) was enacted in 2001 social media sites such as Facebook and Twitter did not exist or were very much in their infancy.

Social media began to filter into the communications and campaigning strategies of candidates in 2013 and grew apace in 2016. Social media is also used by members of the public to express their views on particular issues or candidates. A raft of issues around the applicability of the regulatory settings to social media accompany this trend. This is particularly true of the provisions around election advertising.

During 2016 SOLGM was asked to provide legal advice as to whether advertisements or communications that appear to promote the election of a particular candidate would fall within *section 113* of the *LEA*.

Our advisors concluded that a communication that appears on the internet probably falls outside the scope of *section 113* but that the legislative provisions could be a great deal clearer. They based this conclusion on the fact that *section 113(1)* provides a list of places where advertisements cannot be published without authorisation including:
"… any newspaper, periodical, notice, poster, pamphlet, handbill, billboard or card or broadcast or permit to be broadcast over any radio or television station, any advertisement…"

Online campaigning is likely to continue to increase in future elections, both in terms of quantity and sophistication. It is an offence for candidates (or persons acting on behalf of a candidate) to publish an advertisement without the proper authorisation. That being the case, there should be far greater certainty in the treatment of Internet based communications.

We have looked at the equivalent provisions in the *Electoral Act 1993*. As we understand it, Parliament has expressly included Internet-based advertisements in relation to Parliamentary elections. *Section 3A* of the *Electoral Act* states that an electoral advertisement is an 'advertisement ***in any medium***…", which would extend to the Internet or online media.

However, this is also safeguarded with a series of exemptions. These should be reviewed and, where consistent with the intent of the *LEA*, these exemptions should be incorporated into the *LEA*. In particular, *section 3A(2)(e)* expressly excludes *"any publication on the Internet or other electronic medium, of personal political views by an individual who does not make or receive a payment in respect of the publication of those views"* from being regarded as an advertisement. This would avoid doubt as to whether activity as trivial as a member 'liking' a candidate's post requires a promoter statement.

RECOMMENDATION 27: Social media

SOLGM recommends that, in accordance with practice in Parliamentary elections:

(a) the definition of advertisement in the *Local Electoral Act 2001* be amended to include advertisements in any medium

(b) the expression of personal political views on the Internet be expressly excluded from the definition of electoral advertisement.

District Health Board (DHB) elections

Voting in a local election can be complex – in some local authorities voters can be faced with six election issues, not including local referenda or elections conducted in accordance with *section 8*, *LEA* (such as various community trusts).[17] In addition, in around 90 percent of local authorities there is a multiplicity of voting systems to deal with, with the potential for voter confusion.

17 Mayor, territorial councillor, regional councillor, community/local board member, DHB member and licensing trust.

We submit that the movement of DHB elections away from the local electoral window would be one step towards reducing the complexity of local elections. Most DHBs are sizeable agencies, have a nominated person who is responsible for oversight of elections (although the electoral officers do the delivery) and should have the capacity to run an election. That local authorities run DHB elections is a matter of historical convention and administrative convenience rather than genuine necessity.

This is an appropriate place to raise the difference in voting systems and the potential for confusion this can cause. The different voting systems do have an impact on the level of informal voting in DHB elections. Data from the 2013 elections (the latest available) shows that informal voting in DHBs ranged from a low of 2.5 percent to as much as 9.7 percent (Lakes DHB). Other DHBs where almost one in 10 votes were informal included Auckland DHB, Bay of Plenty DHB and the Southland constituency election to Otago-Southland DHB. By comparison only one local authority (Palmerston North) reported informal voting higher than 2 percent, and in most cases the level was below 1 percent.[18]

We are aware that overseas research suggests that turnout is greater when elections are conducted in conjunction with each other. However, we note DHBs are not the only elected part of the Crown – school elections are conducted locally (and they are much smaller agencies than most local authorities).

Alternatively if the option of a separate election process does not appeal, then there is always the option of holding the DHB elections in conjunction with the general election. We submit this is a matter for the Crown, but note there are examples of jurisdictions that combine central and local elections. For example, some jurisdictions in the United States combine presidential, congressional, gubernatorial, state and local elections for positions as varied as the mayor and county assessor (valuer).

RECOMMENDATION 28: District Health Board elections

SOLGM recommends that the District Health Board elections be separated from the local government election process.

Access to the unpublished roll

The *Electoral Act 1993* creates what is known as the unpublished roll. We are advised that as at January 2017 there were approximately 17,600 electors on this roll. This is a device for protecting those electors whose personal circumstances are such that publication on the electoral roll may compromise their personal safety (for example, police officers and those who are protected by a domestic violence protection order). By law, the details of the people on this roll cannot be provided to anyone outside the Electoral Commission, including to local authority electoral officers and their staff.

Those on the unpublished roll are eligible to vote in local elections. In these cases the Electoral Commission notifies the elector that they are eligible to vote as a residential elector. The voter then contacts the electoral officer to exercise a special vote and fills in a special voting declaration.

18 Source: Department of Internal Affairs, 2013 Local Election Statistics, downloaded from https://www.dia.govt.nz/diawebsite.nsf/files/2013-local-authority-elections/$file/2013-local-authority-election-statistics.xlsx on 3 May 2017.

As it stands the process is reliant on the elector making an approach to the electoral officer. The number of special votes issued is generally a great deal lower than the number on the unpublished roll. For example, at the 2013 local elections there were approximately 15,600 electors on the unpublished roll and around 13,000 special votes cast in total (there is no estimate of the number on the unpublished roll that actually voted).

SOLGM accepts that personal safety is a valid concern and that there should be protections for voters with a genuine and demonstrable concern for their personal safety. Electoral officers and staff make a declaration, which includes an undertaking not to disclose information received in this role unless authorised by the *LEA*. An intentional or reckless breach of this *Act* is an offence punishable by a fine of up to $2000. We suspect that an electoral officer guilty of any breach, whether intentional or not, would also face disciplinary action and (potentially) employment consequences

We do not see these concerns as insurmountable in that electoral officers and staff are subject to the same restrictions as Electoral Commission staff and the returning officers. These protections could be extended to others exercising functions in support of local elections, such as mail-house staff.

RECOMMENDATION 29: Unpublished roll

SOLGM recommends that the *Electoral Act 1993* be amended to provide electoral officers with access to the unpublished roll.

Access to the supplementary roll

The Electoral Commission maintains what are known as supplementary rolls. These are electors who have enrolled after the close of the roll. These data are not currently available to local authorities. Requests for these data have been rejected due to an apparent lack of specific authority for the Commission to supply information.

In the absence of this information the electoral officer must send details of the requests to the Electoral Commission and wait for confirmation. We have received advice that this process has delayed the declaration of final results by as much as three days in some local elections.

In a similar vein, the Electoral Commission are 'keepers' of the deletions file – a list of people who have been removed from the roll.

RECOMMENDATIONS 30 and 31: Supplementary roll

SOLGM recommends that:

29. the *Electoral Act 1993* be amended to require supply of a supplementary roll before polling day

30. local authorities should be provided with access to the deletions file.

Ratepayer franchise

The ratepayer electoral franchise is a unique feature of the *LEA*. Voters on the electoral roll vote in the local authority in which they reside, but in cases where they are a ratepayer in another local authority they can also choose to vote in that local authority.[19] The textbook example would be an Aucklander with a holiday home at Waihi Beach. He or she is on the roll for Auckland Council, but may also enrol to vote in elections for the Western Bay of Plenty District Council. The ratepayer franchise flows from the principle of 'no taxation without representation' and should be retained.

Eligible electors who wish to exercise the ratepayer franchise need to enrol separately as a ratepayer elector. But, unlike the process for enrolling as a Parliamentary elector, the ratepayer elector must re-enrol each triennium.

The eligibility for the ratepayer franchise is determined from information on the local authority's rating information database (a collection of information used for assessing and collecting rates).

A person becomes eligible for the ratepayer roll through the act of acquiring a property in a district in which they do not normally live. The local authority becomes aware of the acquisition when it receives a notice of sale (which the former owner is responsible for furnishing).[20] Amendments to the local authority's district valuation roll are made through a process known as 'roll maintenance' – which some local authorities undertake themselves while others contract their valuer to undertake this activity on their behalf. That the new ratepayer is eligible for the ratepayer franchise is picked up through the ratepayer's address for sending rates assessments/invoices as it appears on the district valuation roll (DVR).

This rating process could be used to determine when a ratepayer elector is no longer eligible for the ratepayer roll. All this requires is the addition of an indicator to the rating unit's entry on the local authorities' rating information database (not the district valuation roll) that signals whether the owner is on the DVR.[21] When a property is sold, the person doing the roll maintenance is made aware the property was formerly owned by a ratepayer elector and advises the electoral officer.

19 To qualify as a ratepayer elector, the potential voter must be identified in the appropriate valuation roll as the sole ratepayer in respect of a rating unit within the region, district, local board area or community. That is to say if A Smith and B Smith, Aucklanders, jointly own a rating unit in Kaipara only one of them can exercise rights to enrol as a ratepayer elector in Kaipara. An elector who owns property in different community or local boards within the same local authority can also register as a ratepayer elector in respect of the community/local board election only.

20 *Section 32, Rating Act* – this *Act* is the means through which the former owner removes themselves as the person liable for rates.

21 A local authority's rating information database holds all of the information necessary to set and assess rates. This includes the information on the district valuation roll, but in many cases also includes other information valuers do not collect and which is used to set rates.

Ratepayer electors may remain eligible for the roll but choose not to stay on it. At present all they need do is not return the form when the registration process opens. This change would require a ratepayer elector to take action to get themselves *removed*. That requires some redesign of the existing forms or the creation of a new form signalling the elector's wish to leave the roll.

Section 27 of the *Local Government Rating Act 2002* allows a local authority to use information on the database for communication with ratepayers. In this era of privacy and litigiousness it may be desirable, but probably not essential, that this provision be amended to put the use of information for administering the ratepayer franchise beyond doubt.[22]

There would be a need to change some of the regulations governing preparation of the ratepayer roll. *Regulation 15* would need to change to allow for the possibility of a ratepayer deciding to remove themselves from the ratepayer roll. A similar provision may be needed in *regulation 17*.

RECOMMENDATION 32 and 33: Ratepayer enrolment

SOLGM recommends that:

32 ***section 27* of the *Local Government Rating Act 2002* be amended to remove doubts that local authorities may use information from the rating database to administer the ratepayer franchise**

33 ***regulations 15* and *17* of the *Local Electoral Regulations 2001* be reviewed for consistency with the ratepayer's right to remove themselves from the ratepayer roll.**

Electronic transmission of nominating documents

The 2016 elections marked the first time when the decline in levels of service provided by the postal system were evident. One of the ways this manifested itself was in the delivery of nomination forms from potential candidates.

In some parts of many regional councils and some of the larger rural councils, it is not uncommon for post to take a week to get from an isolated community to the receiving council offices. We became aware that local authorities were advising residents contemplating nomination to allow a week for delivery by post. We also became aware that local authorities had received conflicting legal advice as to whether nominations that were scanned and emailed were 'in writing' for the purposes of the *LEA*.

We also sought advice and concluded that the answer to this question was far from clear and the least risk course was for candidates to 'post early'. Clearly something as fundamental as what 'nomination in writing' means should be clear and certain.

22 The provisions governing the use of and access to, information on the rating information database and the links between these provisions and other statutes that draw on this information are well-known for their overall lack of coherence and ability to 'talk to' each other.

We submit that a nomination received electronically should be valid provided the particulars are all clearly legible (including the signatures and addresses of the nominee, nominator and seconder).

RECOMMENDATION 34: Transmission of nominating documents

SOLGM recommends that the *Local Electoral Act 2001* be amended to allow for electronic transmission of nomination forms.

Electronic transmission of votes from overseas

As noted above, SOLGM considers it is a matter of 'when not if' online voting becomes available for local elections.

The *LEA* and regulations currently only allow voters wanting to cast a special vote to receive or deliver the documents by post or in person. This makes casting a special vote problematic at best for those voters who are overseas. In essence the voter has to know that they will be at a particular postal address during a particular window of time (in some parts of the world that window may be as narrow as 2-3 days even if the international postal system works to the optimum).

The *Electoral Regulations 1996* now permit the electronic transmission of special voting documents from electors who are overseas provided that a secure means of transmission is available.[23] We can see no reason why a similar provision could not be incorporated into the Local Electoral framework.

Of course, this is very much an interim, second-best solution while central and local government works on the policy, security and technical issues associated with online voting.

RECOMMENDATION 35: Electronic transmission of special votes

SOLGM recommends that the *Local Electoral Act 2001* be amended to allow electronic transmission of special votes to and from voters who will be overseas during the election period.

23 Regulation 47B, Electoral Regulations 1996.

Coming into office

This issue is one of the minor legislative 'glitches' that occur from time to time when dealing with complex legislation.

Amendments to the *Local Electoral Act* in 2013 successfully aligned the date at which candidates elected unopposed, and candidates elected through a triennial election, come into office as being the day after declaration of the final result. It overlooked doing the same for members elected through a by-election, though ironically the less common circumstance where vacancies are filled through appointment is covered.

We submit that the *LEA* should be amended to provide that a successful candidate in a by-election comes into office on the day after the day on which the official result of the election is declared by public notice under *section 86* of the same *Act*.

RECOMMENDATION 36: Coming into office

SOLGM recommends that the *Local Electoral Act 2001* be amended to provide that a successful candidate in a by-election comes into office on the day after the day on which the official result of the election is declared.

PART THREE

Amendments to the other legislation within the local government portfolio

Local Authority Members' Interests Act 1968

Some readers may be tempted to regard the *Local Authority Members' Interests Act 1968* (*LAMIA*) as primarily a governance matter and not something a managerial member organisation such as SOLGM should have a view on.

Our members have a critical role in helping elected members understand their obligations. LAMIA is a mandatory inclusion in the first briefing chief executives must arrange for an incoming council. Our members and other staff in local authorities are frequently called on as 'first responders' when elected members are unsure whether they have an interest.

We support the policy rationale for LAMIA, namely that those in elected office make decisions that are in the public interest and without the intrusion of personal interest.

The *Act* is complex, outdated and difficult to interpret and apply. It predates accrual accounting, the modern financial management provisions and the introduction of mandatory competitive tendering for NZTA roadwork and its acceptance elsewhere. It also predates the common practice that elected members declare their interests. Some core concepts, such as pecuniary interest, are not defined.

The *Act* establishes two key rules that govern the management of elected members' pecuniary interests (non-pecuniary interests are not included). These are the:

- discussing and voting rule and
- contracting rule.

The *discussing and voting* rule holds that elected members must not vote or take part in discussion of any matter where they have a pecuniary interest (other than one in common with the public) that is before a local authority. Breaching this requirement is a criminal offence and, on conviction, a member is ousted (that is, the office is deemed to be vacant). However, it is not always easy for elected members to determine whether their interests are pecuniary or whether they are in common with the public.[24]

The second of the key rules is the so-called contracting rule. This provides that any elected member who is concerned or interested in contracts with the local authority valued at more than $25,000 in any year is disqualified from office (unless they receive approval from the Auditor-General). There are a number of concerns with this provision. For example:

- disqualification is automatic, and there is no prosecution or formal declaration of the fact (unless the elected member acts while disqualified)
- it is not clear how long disqualification lasts
- it is unclear whether the *Act* applies to, or should apply to, CCOs

24 To give an example, an elected member discussing and voting on the general rate has an interest in common with all other owners of rateable property and (sensibly) then would not experience any issues under this legislation. However, where a targeted rate was over a particularly small group of ratepayers an elected member may find themselves with a pecuniary interest. These issues are not black and white – there are many variations of grey.

- the $25,000 limit has not been amended since 1982. Adjusting for inflation since then means this limit now has little more than a third of the 'value' it did then. (It is even less certain given it is not clear whether this limit includes or excludes Goods and Services Tax).

Additionally, we must query whether this provision needs to exist at all. We suggest that having an interest in contracts with a local authority would create a conflict of interest for an elected member that might apply to a certain area, or areas, of the local authority's operations. But should the fact that Cr Smith owns a road contracting business that contracts with the local authority automatically rule them out from involvement in decisions around parks or libraries or water supply? It is also hard to conceive of a circumstance where an interest of this nature would not also be pecuniary and remove Cr Smith from discussion and voting.

We submit that this is a piece of legislation which needs to be reviewed more or less from first principles. We are not alone in this view. Our understanding is that Local Government New Zealand included this matter in their manifesto and that the Auditor-General has publicly expressed the same view.

RECOMMENDATION 37: Members' Interests Act

SOLGM recommends the *Local Authority Members' Interests Act 1968* receive a first principles review.

Local Government Rating Act 2002

The *Local Government (Rating) Act 2002* (the *Rating Act*) is largely a well-designed piece of legislation – within its limitations as a system based on property taxation. We would however like to raise three issues with you:

- rating exemptions
- volumetric charging for wastewater disposal, and
- delegation of the collection of rates assessment, collection and enforcement.

Rating exemptions

Schedule 1 of the *Local Government (Rating) Act 2002* contains an exemption from rates for 22 different categories of land. Some of the categories are small but others are significant in their scope (for example National Parks, the education sector and the road network). The only rates these properties pay are targeted rates for water supply, sewage disposal and refuse collection.

In *Auckland City Council* vs *Royal New Zealand Foundation for the Blind (2006)*) Justice William Young had this to say about rating exemptions:
"Over the 130 years which have elapsed since a national system of rating was introduced, there have always been some statutory exemptions from rating. These exemptions have always been disparate in nature and some of those which remain in the current Act seem distinctly odd."

This is a good summary of the current set of exemptions – the policy rationale for many of the exemptions is non-existent or highly suspect, and many seem to be the result of historical accident rather than any genuine reason. The drafting of many is open to interpretation and debate. For example, the above case relates to whether land owned by a charity but rented to a third party to generate revenue for the charity meets the requirements of *clause 21* of the Act. Another holds that property owned by a school board and let to a teacher is non-rateable while the same property let to any other person would be fully rateable.

In the most recent review of rating legislation (2001) the then Government's policy decision was to roll over the existing set of exemptions while modernising the language and recasting the exemptions so they would be based on use rather than ownership (although in practice many still have some reliance on ownership – especially where Crown agencies are the landowner).

It appears the policy rationale for rates exemptions falls into one of five categories:

- properties are held for public good purposes (i.e. are meeting some purpose that is deemed to be a "national good")
- properties have little or no real economic use and thus may not be able to meet the cost of paying rates
- properties do not consume services provided by local authorities or consume only limited amounts
- some non-rateable properties provide benefits to the local authority that may not otherwise have been generated. For example it is claimed some national parks generate tourist visits which in turn provide centres like Ohakune with economic benefits which they might not otherwise have captured
- exempting properties avoids distortions in the market – this one is most commonly used to justify exemptions for ports, airports and the rail network (if roads are non-rateable then not exempting these properties provides road transport with a cost advantage).

Each of these arguments is superficially attractive, but fails on closer analysis. The national good argument is in reality an argument for national funding of the rates on these properties – to do otherwise effectively expects the local ratepayers in Westland or Dunedin to subsidise the benefits of others. Other properties provide benefits to local communities (for example in some towns the pulp and paper mill or the freezing works are virtually the sole employer) yet these properties are fully rateable. The level playing field argument is possibly the strongest argument of those listed above – although ports, airports and rail generally compete with the state highway network rather than local roads.

It has been estimated that the amount of revenue forgone on non-rateable land is between $35 million and $70 million nationally, of which between 66 and 75 percent is on Crown land (this is net of any rates already collected)[25]. This is equivalent to between 1 and 2 percent of the total rate take, but falls unevenly across local authorities.

In our view few of the current exemptions would survive a first principles review. In cases where a genuine rationale exists, then the exemption needs to be drafted in as clear a manner as possible to avoid creating loopholes and unintended consequences.

The sector would be willing to discuss arrangements for transition towards the removal of exemptions and would be willing to help contribute to resolving some of the issues this might generate (such as valuation methods for land where there is no active market).

25 This does not include residential areas of educational establishments and the Crown estate.

RECOMMENDATION 38: Rates exemptions

SOLGM recommends that the present set of rating exemptions in the *Local Government (Rating) Act 2002* be removed *in toto*.

Volumetric charging for wastewater

Section 19 of the *Local Government (Rating) Act* ('the *Rating Act*') allows local authorities to set a rate for water supply which is based on a measurement of water used by or supplied to each rateable property. This is known as volumetric charging or 'metering' by the general public. Around 30 local authorities make use of this power, and in some individual cases up to 20 percent of the rate take comes from this particular tool.

However, the *Rating Act* does not contain a similar provision allowing local authorities to assess rates for wastewater disposal on the same basis. A volumetric charge may be a more equitable mechanism than other alternatives such as a pan charge or a value-based rate because it reflects actual use. Volumetric charging for both water and wastewater can also provide local authorities with incentives to manage the entire water cycle in an integrated fashion.

It is common in overseas jurisdictions for wastewater disposal to be charged on the basis of water consumption (a usual proxy is that wastewater costs are recovered on the assumption that 80 percent of water consumed on the property eventually leaves the property via the sewage system). However, technology is becoming available to meter wastewater disposal directly – thus the legislation should be future-proofed to allow for cost recovery on either basis.

RECOMMENDATION 39: Volumetric charging for wastewater disposal

SOLGM recommends that *section 19* of the *Local Government (Rating) Act 2002* be amended to allow wastewater disposal to be rated for on the basis of either the volume of water consumed or the volume of wastewater leaving a property.

Delegation of rates assessment, collection and enforcement

A recent High Court decision (*Mangawhai Residents and Ratepayers Association and Rogan* vs *Northland Regional Council and Kaipara District Council)* has raised implications for rating practice in some regional councils.

Section 53 of the *Rating Act* empowers local authorities *to "appoint a person or a local authority to collect the rates they assess."* We are aware that five regional councils have delegated authority to their constituent territorial authorities to collect regional council rates on their behalf.

While it is clear that the collection of rates can be delegated, the above litigation centred on whether a local authority may delegate the assessment of rates and the recovery of unpaid rates. For example, in the above case Kaipara District Council was adding penalties, contracting mortgagors and taking other action to enforce unpaid regional council rates.

In her decision Justice Duffy held that there is no express power to delegate the assessment and collection of rates in the *Rating Act* and that an express authority would be required before lawful delegation could occur. Local authorities appear to have mistakenly relied on an assumption that powers to delegate collection also encapsulated the power to delegate assessment and enforcement.

The delegation of regional rates collections saves the five regional councils and their communities a significant cost. While we can see the basis for the judge's ruling, we were involved in the policy process that developed the *Rating Act* and suspect the narrow drafting of *section 53* was an omission.

It's important to note this recommendation resolves the matter 'going forward' and does not resolve the issues that past practice have created. We are not asking the Government to intervene in a matter that is before the courts or to validate past practice.

RECOMMENDATION 40: Delegation of rates assessment, collection and enforcement

SOLGM recommends that the *Local Government (Rating) Act 2002* be amended to allow a local authority to delegate the assessment, collection and enforcement of rates.

Rates Rebate Act 1973

The *Rates Rebate Act 1973* established the Rates Rebate Scheme which was intended to help low income ratepayers pay their rates.

In the mid 1980s a decision appears to have been taken not to regularly review the scheme and as a consequence the scheme was left to wither on the vine for around 20 years.

In your previous term as Minister of Local Government the scheme was reviewed and the maximum rebate and qualifying income were readjusted to take account of inflation in the intervening period. Successive governments have honoured the commitment given at that time to annually reassess both aspects in order to keep up with movements in the Consumers Price Index.

As a result the number of rebates and amount of assistance paid out has increased markedly. The latest available information suggests around 98,000 claims were paid, totalling around $54 million (although both have been dropping in recent years).[26]

26 Source: Department of Internal Affairs

The *Act* is very much a product of its time. One of the consequences of the restoration of the scheme is that it has served to highlight:

- some real or perceived inequities in the eligibility for the scheme as new forms of tenure are developed
- some real or perceived inequities in the charges that fall within the scope of the scheme and
- the paper based nature of the scheme and how out of step this is with digital ways of doing business.

Administration

The *Act* dates from a time before the personal computer. The processes are entirely paper-based and therefore not well attuned to the modern business environment or to user expectations that services will be delivered online. From time to time the Department begins a review of the operation of the scheme and it gets lost amongst other priorities. One council spends $200k administering the scheme – even a 50 percent saving in this amount would equate to another 150 rebates.

RECOMMENDATION 41: Modernising the rates rebate administration

SOLGM recommends that the *Rates Rebate Act 1973* be reviewed to allow applications to be made in electronic media.

Veterans' Affairs allowances and pensions

Section 2 of the *Rates Rebate Act 1973* excludes war widows' pensions and war disablement pensions as general descriptions of a class of income that is not taken into account as income when determining eligibility for a rates rebate.

We have been advised that the above terms are not consistent with the descriptions in the *Veterans' Support Act 2014* and consequently there is some ambiguity about the treatment of these pensions and allowances for the purpose of the scheme. We submit that these pensions and allowances should be excluded as income (this is the current practice and would not extend the coverage of the scheme).

RECOMMENDATION 42: Veterans' Affairs allowances and pensions

SOLGM recommends that the *Rates Rebate Act 1973* be amended to clarify that all impairment compensation pensions and allowances paid by Veterans' Affairs, under the *Veterans' Support Act 2014*, are not included as income when determining eligibility for a rates rebate.

Rates rebates and retirement villages

There is a perceived inequity in the treatment of residents of retirement villages in that those residents who own their own property within the village are deemed to be the ratepayer and consequently are eligible for the scheme. On the other hand, those residents who do not own their property, but have tenure through a licence to occupy pay rates as part of their 'rental' to the village operator and therefore are not considered a ratepayer for the purposes of the scheme.

The previous Parliament considered a *Private Members' Bill* (in the name of the Hon Ruth Dyson) that addressed this issue. SOLGM supported the intent of the *Bill* but noted a number of practical and technical concerns with the *Bill* as it was introduced.

To make that *Bill* work, territorial authorities would need to undertake the following actions to manage the scheme on behalf of the Government:

- an apportionment of the values in the rates information database for all retirement villages. However, the retirement village rates will not only be apportioned between each of the qualifying residents of the village, but will also include other non-residential activities such as hospital or nursing care facilities. This will require each local authority to obtain separate divisions of each rating unit for the sole purposes of the *Rates Rebate Act*. Although *section 27(5)* of the *Rating Act* allows for apportionments on certain grounds, administration of the *Rates Rebate Act* is not currently one of these
- each targeted rate will need to also be apportioned based on the matters and factors relating to each separate division. This can be particularly complex for water and wastewater rates where the basis of rating is often the number of connections or water closets or urinals, and the associated rates may not be uniform. Therefore, allocating rates to individuals will be complex.
- while the rates will still be paid by the retirement village operator, the local authorities will need to maintain a register of residents for processing of the rates rebate.
- as most local authority's invoice on an instalment basis and the rates rebate is available from July each year, it is a requirement[27] for the rates rebate to be credited against the remaining rates for that rating year. It is important that the rebate (credit) is allocated to the appropriate resident and not allocated across all residents, as not all residents will qualify for the rebate.

These tasks are not insignificant and will result in increased costs to the local authority. The local authority's valuation service provider will need to be engaged to undertake the apportionment. Local authorities would also need to dedicate more staff resource to administrative tasks such as allocating the rates and maintaining appropriate registers.

We believe there is a solution and we offered this to the Select Committee. *Section 7* of the *Rates Rebate Act* provides for rates rebates to be given to the owner of owner-occupier flats. These provisions could be applied to the residents in retirement villages.

This would require a new section to be included in the *Rates Rebate Act*. This section should include a provision to permit a refund directly to the resident rather than the ratepayer, being the retirement village operator, once the rates have been paid or a portion of the rates have been paid at a level enabling the rebate to be processed. This would ensure that the qualifying resident would receive the appropriate rebate.

27 As required by section 8 Rates Rebate Act 1973

The issue facing these residents is a subset of an issue that others on licences to occupy face when attempting to access the scheme. For example, local authorities commonly encounter ratepayer objections and resistance to the notion that people who occupy a property on a 'life interest' arrangement, and who pay rates under this arrangement, cannot qualify for the scheme as they are not owners. The *Te Ture Whenua Māori Amendment Bill* has also stoked concerns that owners of homes on Maori freehold land with multiple ownership will miss out.

RECOMMENDATION 43: Retirement villages and the *Rates Rebate Act*

SOLGM recommends that the coverage of the *Rates Rebate Act 1973* be extended to residents of retirement villages who hold a licence to occupy.

CCO charges

One of the lessons from the Auckland reorganisation is that CCO charges are not legally regarded as rates and are therefore excluded from the coverage of the Rates Rebate Scheme. In other words, a metered water charge levied under the *Rating Act* and payable to a council is covered by the scheme, but the same charge levied by a CCO is not.

The practical effect of this is to reduce the entitlements of low income ratepayers under the scheme. We understand that Auckland Council now 'tops up' the entitlement that eligible ratepayers receive to address this issue.

We submit that local authorities will increasingly use CCOs as a means of service delivery. The Rates Rebate Scheme should be neutral in its treatment of service providers.

RECOMMENDATION 44: CCO charges and the *Rates Rebate Act*

SOLGM recommends that the coverage of the *Rates Rebate Act 1973* be extended to water and wastewater charges levied by a CCO.

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