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Committee Secretariat
Governance and Administration Committee
Parliament Buildings
Wellington

Via email: ga.legislation@parliament.govt.nz

SUBMISSION ON THE LOCAL GOVERNMENT (SYSTEMS IMPROVEMENT) AMENDMENT BILL

Tēnā koe,

1. The Dunedin City Council (DCC) welcomes the opportunity to provide feedback on the proposed Local Government (Systems Improvement) Amendment Bill (the Bill).
2. As a territorial authority with significant roles and responsibilities, the DCC supports efforts to improve the quality and delivery of local authority services and activities to improve the well-being of its communities in a financially prudent way. However, the DCC has concerns about several of the Bill's proposed changes and its potential impacts, starting in the first instance with the purpose statement.
3. The changes in the Bill appear to be focused on a perceived lack of fiscal discipline by councils. However, as the Regulatory Impact Statement (RIS) notes, "cost pressures on councils are being driven by capital and operating cost escalation, flowing from supply chain upheaval and a tight labour market during the Covid-19 pandemic, and accelerated headline inflation since". The DCC agrees with this analysis and rejects any suggestion of fiscal profligacy.
4. The Explanatory Notes for the Bill highlight rates rises and their drivers, although context appears to be missing. While rates have been stated as rising "by an average of 15%", many councils are managing significant infrastructure backlogs due to decades of underinvestment. This has contributed to higher operating costs, as ageing facilities often require more maintenance and operate less efficiently.
5. Councils are now addressing the backlogs at a substantial cost, and in parallel with significant reforms (which come with costs, especially where there are changes in reforms as between different governments).
6. In the DCC's 9 Year Plan 2025-34, three waters, roading, and waste services made up more than 85% of capital expenditure and more than 55% of operational expenditure, with these costs representing just some of the "core services" referred to in the Bill.

The Bill Changes the Purpose of Local Government

7. The purpose of local government is set out in section 10 of the Local Government Act 2002 (the Act). The purpose of the Act is set out in section 3 of the Act. Both sections refer to the four well-beings.

8. The Bill proposes to remove the current four 'well-beings' in sections 3 and 10 of the Act.

9. Regarding section 3:

The Bill replaces section 3(d) of the Act "provides for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach" with:

"provides for local authorities to play a broad role in meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions."

10. Regarding section 10:

The Bill replaces section 10(b) of the Act "to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future" with:

"(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; and

(c) to support economic growth and development by fulfilling the purpose set out in paragraph (b)."

11. The DCC contends that removing the four well-beings from the Act is more than just symbolic – it effectively narrows the role of councils by downplaying the social, environmental, and cultural dimensions that are just as important to communities as economic considerations.

12. In other sections of the Act (e.g. section 14's principles relating to local government), the well-beings are to be replaced with the 'interests' of people and communities. Although 'interests' may be broad enough to include activities and services that currently fall under a well-being banner, there may still be uncertainty about what an interest is and who determines it. To minimise the risk of being challenged, this could be better defined if not removed.

13. Removing the well-beings may or may not alter what is currently delivered as 'local public services'. However, in practice the community outcomes may become more council-centric rather than more broadly community and district orientated, given that they are now defined in terms of the revised purpose statement; i.e., delivering good quality local infrastructure, local public services, and performance of regulatory functions.

The Impact of Moving From Four Well-beings to One

14. The DCC contends that the proposed purpose statement effectively reduces the four well-beings into just one around economic well-being. However, the RIS for the Bill makes it clear that a purpose focussed on the well-being of the community has not added cost to the sector. The DCC understands that the previous removal of the well-beings did not result in any material reduction to the rates required to support council expenditure. This is because most council expenditure is already spent on core infrastructure and local public services and amenities.

15. By focussing on just an economic objective, there is the risk this may do more harm than good by not adequately taking into account environmental and social policy issues, e.g. the impacts of climate change upon communities, and affordable housing for people to live and work in Ōtepoti Dunedin. The approach moves from collective or community well-being toward individual or corporate interests.
16. Further, a broader place-making approach—often central to a locality’s development—may either be lost, or may need to be subsumed under the economic objective in order to attract and retain people and businesses. Either way, there is the risk of dispute from those disaffected with the direction taken. It also potentially creates siloes by giving primacy to the economic over other domains.

Lack of Clear Definitions in the Bill and internal inconsistency in clause 6

17. The benefit of the current wording in section 10 of the Act is that it enables councils to focus on whether they “should” undertake activities, as opposed to whether they “can”. The broad empowerment provided by the well-beings assists by providing protection from legal challenge, with the focus on process compliance rather than potential unlawfulness.
18. Clause 6 of the Bill (amending section 10 of the Act) refers to “good quality” and “cost-effective”, which could cause interpretation problems either on their own or when taken together.
19. Firstly, the definition of “good quality” in section 5 of the Act refers to what is “appropriate to present and anticipated future circumstances”, i.e. taking a long-term view. This concept may conflict with the “cost-effective” requirement, which if considered on economic or financial terms could be taken to support a “least cost” approach, i.e., taking a short-term view. There may be the risk of legal challenge as a result.
20. Secondly, “cost-effective” is not defined in the Bill. It is not clear whether “cost-effectiveness” refers to short-term or long-term cost-effectiveness, and whether cost is defined solely in financial terms. Also, what happens if something is cost-effective for households, but not for businesses? How does the performance of regulatory functions satisfy the cost-effective requirement?
21. The lack of clear definitions will likely increase compliance costs for councils in addition to them requiring that before they make any decisions they comply with the amended section 10. Clearly defining policy objectives will likely help local authorities although the potential for dispute remains which increases the risk of litigation for local authorities.
22. The new elements in the proposed section 10(b) of “good quality local infrastructure, local public services and the performance of local regulatory functions” are not well-aligned with the proposed list of core services under clause 7 of the Bill. Although ‘local public services’ is broad enough to include many current activities of councils, despite potential for dispute, they may not always fall under the list of core services. One example is the inclusion of museums as a core service but not art galleries.
23. Also, the reference to “economic growth and development” in the proposed section 10(c) is unduly restrained as it is limited by the proposed purpose set out in the proposed section 10 (b). For example, economic growth and development is often through things such as marketing,

agreements regarding filming within a local authority's territory and supporting events that have significant flow-on value to the local economy. However, it is difficult to see how these functions fall within the proposed section 10(b) purpose of being "good quality infrastructure, local public services, and performance of regulatory functions".

24. Ultimately, the DCC would like to see bi-partisan support for a purpose statement that establishes an enduring framework that supports a successful local government sector. Changing the purpose with successive changes of government is problematic and comes at a cost to ratepayers (and taxpayers).

Defined Core Services

25. As noted, the "core services" listed in clause 7 of the Bill already account for the vast majority of the DCC's budget. Despite some narratives in the political domain, most of a territorial authority's expenditure is in fact on roads and pipes infrastructure and is included in the list of core services described in the Bill. However some are not, as highlighted above with museums (on the list) and art galleries (not on the list).
26. Although the list of core services does not mean local authorities have to deliver them all, or precludes them from delivering others, there is a constraining if not inflexible effect as the list says that the activities "are" the core services rather than "includes". This is reinforced in terms of financial management, where there is a new obligation in the Bill for section 101 of the Act to have regard to the proposed purpose of local government and the core services of a local authority.
27. Rigidly defining core services also ignores changing community priorities as well as the need to respond to present and future circumstances, e.g. climate change adaptation. This is another area that may lead to risk-averse behaviour by councils along with the possibility of judicial challenge.
28. Regulatory services are also not included as core services, which seems at odds with the Bill's purpose statement in the proposed section 10(b) which refers to regulatory functions. It may be worth considering whether councils' regulatory functions—such as building and resource consents, parking enforcement, and dog registrations—should also be recognised as core services given their statutory nature.
29. Also, there are many things which local authorities would consider core services that are not listed in the proposed section 11A. We have already mentioned the absence of any reference to regulatory services and art galleries, but there are others such as cemeteries, economic development initiatives, the avoidance or mitigation of natural hazards (including activities that improve resilience to natural hazards), civic affairs and community housing. We expect that Town Halls and community halls may be included in recreational facilities, but this not entirely clear.
30. A reference to the avoidance or mitigation of natural hazards is considered particularly important for places such as South Dunedin where DCC is undertaking a programme called South Dunedin Future that aims to find proactive ways to respond to climate change and flooding problems.

31. The Local Government Act 1974 used a model where Councils could only do something if they could point to a specific provision that allowed for the activity or function. DCC wants to avoid heading back towards that model. The 2002 Act provides a much better model where there is an ability to act but with appropriate checks and balances in place. DCC is concerned that a list of core services is heading towards a model that was discarded for very good reason.
32. The DCC wants to ensure that it can continue to provide the activities and services that its communities want. Shifting to a more prescribed, narrower purpose statement raises the prospect of allegation of unlawfulness if there is a concern that activities do not fit within the narrower list of activities described in section 10 and 11A. For example, do investment activities fit within section 10 or 11A?
33. The DCC is also concerned that a list of “core services” could later be used for the purposes of rates caps on functions not included in section 11A. If there is going to be a list of core services, then it needs to be wider than the present list and genuinely reflect what are core services. For example, regulatory services are undoubtedly a core service for a local authority.

Recommendation 1 – delete the Bill’s clause 6 purpose of local government in its entirety, or as a minimum ensure that the wording is not going to give rise to disputes over interpretation and amend the proposed section 10 (c) so that it is not constrained by the proposed section 10(b). For example, the proposed section 10(c) could be amended to read “to support local economic growth and development for the benefit of communities”.

Recommendation 2 – reinstate the taking of a sustainable development approach to section 3(d) of the Act.

Recommendation 3 – that clauses 7 (core services) and 18 (financial management amendment) be deleted.

Recommendation 4 – In the event clause 7 is retained then it needs to be amended so that it is significantly wider and captures what are core services for local authorities. Things that may not be adequately captured by clause 7 include things such as regulatory services, art galleries, cemeteries, economic development initiatives, the avoidance or mitigation of natural hazards (including activities that improve resilience to natural hazards), civic affairs and community housing.

Governance and Democracy

34. The Bill gives central government a significant amount of control and direction, e.g. giving the Secretary of Local Government the capacity to set binding codes of conduct, standing order rules, and performance measures.

Code of Conduct

35. Under clause 25 of the Bill, local authorities will lose the ability to set their own codes of conduct, and so their ability to tailor them for their communities and to reflect their particular governance arrangements.

36. The DCC contends that there should be the room within the Code of Conduct for discretion to adopt modified provisions where they are appropriate. The ability to change the Code of Conduct could be on the basis of a 75% voting threshold.
37. The proposed changes to the code of conduct also effectively removes each council's ability to set its own expectations for behaviour and engagement. Councils will need clear and fair options to respond to code breaches in a way that supports trust in local governance. Any consequences for breaching the code should match the seriousness of the behaviour.
38. If a code of conduct is to be standardised across New Zealand, the DCC would welcome the opportunity to work with central government in helping to draft the code. Local authorities have a lot of experience regarding the types of issues that arise and what works (and does not work).

Standing orders

39. The DCC does not support the proposed introduction of a new requirement that all local authorities must use the same Standing Orders.
40. While a template is useful, local authorities need the ability to tailor the Standing Orders. This is particularly the case for matters that are peculiar to a particular council. For example, the DCC's Standing Orders include Standing Order 29 which relates to the DCC's Waipori Fund. Under Standing Order 29.1, DCC may only divest all or any part of the capital of the Waipori Fund by a three-quarters majority of the members present and voting.

Governance Principles

41. The Bill proposes under clause 10 to amend the governance principles (section 39 under the Act) by adding subsections on fostering the free exchange of information and the expression of opinions, and fostering the responsibility of its elected members to work collaboratively.
42. The DCC generally supports the intention of the proposed subsections but notes that, to prevent potential misuse of council documents and information and to better guide its release, there needs to be clear grounds for withholding information (e.g. tied to the LGOIMA) and a link to a local authority's code of conduct. The fostering of the expression of opinions also needs to be tempered when Councillors are acting in a quasi-judicial role to avoid arguments of pre-determination.

Recommendation 5 – That consideration be given to whether further checks and balances may be appropriate regarding fostering the free expression of opinions.

Measuring Council Performance and Transparency

43. Clause 22 of the Bill provides that the Secretary for Local Government may make rules specifying performance measures. The DCC generally supports the intent behind this provision but notes that there needs to be an appropriate balance between the performance measures and the additional resource and financial burden for councils.

44. Clause 26 of the Bill requires that local authorities report annually their expenditure on consultants and contractors. The DCC generally supports the intent behind this provision, but notes that councils often rely on consultants and contractors for specialist skills they do not need to hold in permanent, in-house roles. This helps keep staffing levels reasonable while still delivering expert advice and services when needed.

Regulatory Relief

45. The DCC largely agrees with the Bill's proposals to reduce regulatory costs for local authorities, e.g., removing the requirement for 6-yearly service delivery reviews, modernising public notice requirements, clarifying the authority of an acting or interim chief executive to sign certificates of compliance for lending arrangements, and extending the maximum length of a chief executive's second term to 5 years upon the completion of a performance review.
46. The area that the DCC does not agree with is clause 16 of the Bill, which removes the section 57(3) requirement of the Act for local authorities to consider the relevance of tikanga Māori knowledge when appointing directors of a council-controlled organisation (CCO). The DCC does not support clause 16 and questions how the implementation of this clause is cost saving through regulatory relief.
47. The DCC submits that section 57(3) of the Act is a policy-based decision from councils, and while the current legislation advises that councils must consider the relevance of tikanga Māori to a director of a CCO, councils are not required to choose a director based on this knowledge of tikanga Māori. While the removal of section 57(3) would not stop councils from taking into account such considerations found in section 57(3), removing the requirement diminishes the legitimacy and relevance of tikanga Māori.
48. The DCC submits that section 57(3) should remain within the Act, and if anything, strengthened to ensure councils recognise the importance of tikanga Māori and te ao Māori, and how they can benefit CCOs and their wider communities.

Recommendation 6 – That clause 16 be deleted from the Bill, and that section 57(3) be strengthened to ensure local authorities recognise the importance of tikanga Māori, and te ao Māori.

Regulatory Impact Statement

49. The DCC notes that the Bill's RIS states that "Refocusing the purpose of local government will likely have limited impact on its own and may create implementation costs and issues". The RIS further noted that "Feedback suggested that removing the four well-beings could be seen as disempowering local government, and while focusing councils on low rates may succeed, it would likely come at the expense of key council services and infrastructure development". The DCC urges the Government to take heed.
50. The DCC also notes some frustration around the lack of information about clause 10 and clause 16 in the RIS. These statements often provide further information around the justification and context for these clauses to be included. The DCC submits that without this kōrero, it was difficult to ascertain the reasoning for including these clauses into the Bill, particularly clause 16.

The DCC would be interested in additional documentation that covers the justification of these clauses, including a Treaty of Waitangi analysis about clause 16.

Conclusion – the Need to Work Together

51. The DCC supports the goal of system improvement to local government but firmly finds that the current Bill requires significant revision, starting in the first instance with the purpose statement of local government.
52. The DCC does not support a return to a more prescriptive purpose and role of local government and its core services. The Bill's amendments to section 10 of the Act will create a higher risk legislative context for councils, increasing their compliance and possible litigation costs.
53. There are challenges in the sector but a narrower focus and diminished role for local government proposed under the Bill will likely leave communities worse off. The Bill creates a more prescribed environment that reduces discretion to respond to community needs, and places excessive focus on cost-efficiency, as opposed to the importance of community mandate.
54. The DCC calls for collaborative work with local government to ensure any new local government framework is effective and fit for purpose.
55. Thank you for taking the time to consider the DCC's submission.
56. The DCC wishes to speak to this submission at any hearings.

Ngā mihi



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