



Report of the
Local Government Commission
Mana Kāwanatanga ā Rohe
for the year ended
30 June 2008

*Presented to the House of Representatives pursuant to
clause 31 of Schedule 4 of the Local Government Act 2002.*

LOCAL GOVERNMENT COMMISSION

Minister of Local Government
Parliament Buildings
WELLINGTON

Minister

We forward, in terms of clause 31 of Schedule 4 of the Local Government Act 2002, the report of the Local Government Commission to 30 June 2008.

Yours sincerely

The Local Government Commission

Sue Piper	Chair
Gwen Bull CNZM, JP	Commissioner
Wynne Raymond QSO, LLB	Commissioner

LOCAL GOVERNMENT COMMISSION

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LOCAL GOVERNMENT COMMISSION

THE LOCAL GOVERNMENT COMMISSION

The Local Government Commission is constituted under Subpart 3 of Part 3 of the Local Government Act 2002. The Act provides that the Commission shall consist of three members appointed by the Minister of Local Government.

The current members of the Commission are:

Sue Piper (Chair)

Gwen Bull

Wynne Raymond

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INTRODUCTION

Most of the year was taken up with the review of the operation of the Local Government Act 2002 and the Local Electoral Act 2001. This is dealt with in more detail below. As well as resulting in reports to the Minister of Local Government containing the Commission's findings and recommendations, the review also provides a basis for future activity by the Commission in promoting good practice and reviewing other more specific issues affecting local government.

REVIEW OF THE OPERATION OF THE LOCAL GOVERNMENT ACT 2002 AND THE LOCAL ELECTORAL ACT 2001

The Commission was required to undertake this review by section 32 of the Local Government Act 2002. While the bulk of review was undertaken during 2007/08, the work leveraged off both an initial report to the Minister of Local Government in 2004/05¹ and planning work in 2006/07.

The report was largely completed by 30 June 2008 with a summary report proposed to be provided to the Minister in mid-July and the full report in August 2008.²

Focus of review

Without limiting the scope of the review, the Commission was required to determine and assess:

- the impact of conferring on local authorities full capacity, rights, powers and privileges
- the cost effectiveness of consultation and planning procedures
- the impact of increasing participation in local government and improving representation on local authorities.

Key questions for the review were:

- Are any of the provisions of the two Acts a barrier to achieving the policy intent? If they are, is legislative amendment appropriate?
- Are any of the ways that councils are operating and/or interpreting the Acts a barrier to achieving the policy intent? If they are, is the development and dissemination of further good practice guidance appropriate?

¹ Section 32(4) of the Local Government Act provided for an initial report as follows:

"The Commission must, no later than 1 July 2005, present a report to the Minister if it considers that amendments should be made to this Act or the Local Electoral Act 2001 before the triennial general election of members of local authorities in 2007."

The Commission completed and sent a report to the then Minister of Local Government on 1 July 2005.

² The summary report was sent to the Minister on 14 July 2008 and the full report on 26 August 2008.

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Process

Input into the review was sought from a wide range of stakeholders and interested parties.

Key central agencies

The Commission had a number of discussions with the Department of Internal Affairs and the Officer of the Auditor General about the implementation of the Acts and issues that have arisen. Considerable use was made of research material and reports prepared by these organisations.

Local government sector

The Commission received substantive submissions from Local Government New Zealand (LGNZ) and the Society of Local Government Managers (SOLGM). It also sought their observations and views at various stages during the review.

In addition to the SOLGM and LGNZ submissions, the Commission:

- extended an invitation to all local authorities to make any further submissions they wished
- held separate discussions with elected members and officers of 14 selected councils, principally around Local Government Act Part 6 provisions (planning, decision-making and accountability)
- conducted an on-line survey of all councils on specific provisions of the Local Government Act.

Other interested parties

In July 2007, the Commission extended an invitation to a selection of both central government and non-government agencies to raise any issues with the operation of either Act.

It also held discussions with some of these agencies on specific issues and spoke to a number of Māori groups in relation to the provisions of section 81 of the Local Government Act (Contributions to decision-making processes by Māori).

Resident responses and feedback

A programme of social research was commissioned as follows:

- a post-elections survey immediately following the October 2007 local elections examining voting behaviour of electors and the impact of various sources of advertising and other information on elector understanding and behaviour
- a national survey on knowledge of, and participation in, local government
- interviews of submitters to selected local authorities on their experiences of interacting with that council.

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Other research

Legal analyses were commissioned on:

- the Local Government Act 2002 bylaw-making provisions
- the residual provisions of the Local Government Act 1974.

The Commission's staff also carried out research into a number of issues, including the results of the 2004 and 2007 local elections, the causes of informal and blank votes and the order of candidates on voting documents.

A number of the reports and papers resulting from this multi-pronged investigation and research are available on the Commission's website - lgc.govt.nz - along with the Commission's full report: Review of the Local Government Act 2002 and Local Electoral Act 2001 and a summary of the main report.

Findings

Local Government Act 2002

The report concluded that generally the provisions of the Local Government Act 2002, if fully understood and properly implemented, support the policy intent of the legislation.

With a few notable exceptions, the Commission believes improved operation of the Act will be best achieved by the development and dissemination of (further) good practice guidance, coupled with the provision of training, as distinct from significant legislative amendment. The Commission recommended a few substantive amendments to the Act and numerous technical amendments.

Local Electoral Act 2001

The report concluded that generally the provisions of the Local Electoral Act 2001 support the purpose of the Act. This includes an appropriate balance, at this time, between uniformity of rules on electoral processes and diversity on certain specified matters through local decision-making.

Improved operation of the Act was seen to be best achieved through a number of specific legislative amendments and continued development and dissemination of good practice guidance.

The recommended amendments included a number previously recommended by both the Commission in its initial report and the Justice and Electoral Committee in its review of the 2004 local elections. The Commission recommended that these amendments proceed so that they can have affect for the 2010 local elections.

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REORGANISATION PROPOSALS

Proposed boundary alteration between Clutha District and Dunedin City

In November 2007 the Commission received a proposal for a boundary alteration, referred jointly by the Clutha District Council and Dunedin City Council, for consideration and a decision in accordance with clause 10(2) of Schedule 3 of the Local Government Act 2002. The petition had been initiated by 14 Clutha District electors and sought the transfer of the Deep Stream, Lee Stream and Waipori catchment areas to Dunedin City.

The Commission appointed a representative of electors as required under clause 36 of Schedule 3 of the Act and undertook a public consultation process in accordance with clause 37. Forty one submissions on the proposal were received³

Proposed abolition of Kaikoura District

On 16 January 2008 the Commission received a proposal for the abolition of Kaikoura District and its inclusion in Hurunui District. The proposal had been initiated by a group of electors in Kaikoura District. The Commission appointed a representative of electors in March 2008. Submissions are proposed to be called early in 2008/09.⁴

³ The Commission held a hearing of the proposers, the affected councils and those submitters who wished to be heard on 3 September 2008

⁴ The proposal was publicly notified and submissions called for on 13 August 2008.

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60TH ANNIVERSARY OF THE ESTABLISHMENT OF THE COMMISSION

2007 marked the 60th anniversary of the founding of the Local Government Commission. The Commission was established following the recommendation of a Local Government Select Committee in 1945 that a quasi-judicial statutory body be set up to oversee local government reform. The first Commission took office and set to work in 1947.

The Commission formally marked this anniversary in October 2007 at a reception hosted by the then Minister of Local Government, Hon Mark Burton. The Commission was pleased that a number of former members and staff of the Commission were able to attend.

MĀORI NAME FOR THE COMMISSION

In October 2007 a Māori name for the Commission was adopted. The name is Mana Kāwanatanga ā Rohe. A literal translation of this name is "Authority for Governance of Districts". The Commission is pleased that both the literal and conceptual translations of this name convey the meaning of the Commission's functions and responsibilities.

THE COMING YEAR

Section 30(2) of the Local Government Act 2002 established a new role for the Commission, by providing that it may:

- provide information about local government
- promote good practice relating to a local authority or to local government generally.

The Commission has not yet exercised these new functions, but intends doing so with the completion of the review of the Local Government and Local Electoral Acts. In exercising these powers the Commission will be careful not to duplicate the activities of other organisations such as the Department of Internal Affairs, the Office of the Auditor-General, Local Government New Zealand or the Society of Local Government Managers.

While maintaining its independence, the Commission intends discussing its approach to this role with the above organisations to ensure complementary roles are maintained. It is envisaged that the Commission's role in this area will focus on issues that have a relationship to its existing functions, such as governance, representation, electoral matters and boundaries.

A further function of the Commission is to review and report to the Minister under section 31 of the Act on matters relating to local government.⁵ This may be done either at the request of the Minister or on the Commission's own initiative. With one exception, this function has only been exercised on the request of the Minister.⁶

⁵ Since 1990 the Commission has submitted reports on: regional council membership; the structure of local government on the Chatham Islands, for offshore islands and the West Coast Region; Government assistance to the Chatham Islands Council; funding for the West Coast Regional Council; a redundancy payment made to an officer of a local authority and the boundaries of licensing trust districts.

⁶ The exception was the report on licensing trust district boundaries submitted to the Minister in 2006.

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The Commission considers that there is scope for it to undertake reviews on its own initiative more frequently. Doing so would complement the powers in section 30(2) described above and allow issues to be dealt with on a holistic basis.

A number of local authorities are required to review representation arrangements in 2009 and the Commission will be involved in considering any appeals or objections to those reviews. The representation review guidelines required to be published by the Commission will be reviewed and updated.

OBITUARY

The Commission notes with sadness the passing of a former member of the Commission, Heather Little, in February 2008. Mrs Little was a member of the Commission from 1985 to 1990 and participated in the New Zealand-wide reorganisation of local government that was completed in 1989. She was one of the first two women appointed to the Commission. She had been a member of the Waipara County Council from 1974 to 1977, and a member of the Hurunui District Council from 1977 to 1986. On her election to the Waipara County Council she became one of the first two women elected to a county council in North Canterbury.

ACKNOWLEDGEMENTS

The Commission thanks its staff for their support and advice during the year and especially for their work in carrying out the review of the operation of the Local Government Act 2002 and the Local Electoral Act 2001. It also thanks the Department of Internal Affairs for the administrative and other services provided to it.

The Commission acknowledges the considerable assistance given to it in the review of the Acts by the Department of Internal Affairs and the Office of the Controller and Auditor General.

The Commission also acknowledges the assistance given to it by Local Government New Zealand and the Society of Local Government Managers in assisting with the collection of the views of the local government sector for the review of the Acts and the advice provided.

Finally, the Commission wishes to thank the local authorities it has dealt with during the year for their co-operation and assistance.

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APPENDIX

DUTIES AND FUNCTIONS OF THE LOCAL GOVERNMENT COMMISSION

Local Government Act 2002

The Local Government Act 2002 gives the Commission a number of responsibilities:

- 1 It must provide advice to the Minister of Local Government when a local authority has sought a binding ruling from the Minister on significant new activities proposed by a regional council (section 16).
- 2 It may make a determination that amends a reorganisation scheme if the Commission is satisfied that:
 - i. this is necessary to enable, or better enable, the intention of the scheme to be put into effect; or
 - ii. some provision of the scheme is no longer relevant or appropriate to the intention of the scheme (section 26).
- 3 It may determine an application from a territorial authority that wishes to be called a city council or a district council (section 27).
- 4 It may provide information about local government and promote good practice in respect of a local authority or of local government generally (section 30).
- 5 It may of its own accord, or must, if the Minister of Local Government requests it, consider matters relating to a local authority or to local government, report on these matters, and make recommendations on them to the Minister and any relevant local authority (section 31).
- 6 It must review the operation of the Local Government Act 2002 and the Local Electoral Act 2001, and report to the Minister of Local Government as soon as practicable after the 2007 local elections (section 32).
- 7 Under Schedule 3, Part 1, Subpart 3, it must:
 - i. (in the case of a proposal to alter a boundary or to transfer responsibilities) consider and determine the proposal if the affected local authorities have agreed to refer it to the Commission or if they have been unable to agree on which of them should process the application; or
 - ii. (in the case of a draft reorganisation scheme to put into effect a proposal to alter boundaries or transfer responsibilities) hear and determine any appeals against the decision of an appointed local authority or joint committee of the affected local authorities.

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- 8 Under Schedule 3, Part 1, Subpart 4, it must consider and make a decision on any proposals to:
 - i. unite existing districts or regions;
 - ii. constitute a new district or region;
 - iii. abolish a district or region; and
 - iv. create a unitary authority.
- 9 If there is disagreement on how the assets and liabilities are to be apportioned between local authorities when a reorganisation scheme has been implemented, the Commission must make a direction (Schedule 3, clause 69).
- 10 It must consider and determine appeals against a territorial authority's decision to decline a request from a group of electors for the constitution of a community (Schedule 6).
- 11 It must carry out a review of a local authority if the Minister of Local Government appoints it as a review authority (Schedule 15).

Local Government Act 1974

The Commission has two responsibilities under the Local Government Act 1974:

- 1 On request, it must determine the vesting, control, construction, and maintenance of a road which forms the boundary between districts (section 318).
- 2 It must hear and determine objections to proposals to transfer the ownership and administration of local authority land drainage and water race schemes (section 517T).

Local Electoral Act 2001

The Commission has two responsibilities under the Local Electoral Act 2001:

- 1 It must consider and determine any appeals and objections relating to a local authority's representation proposals for the next triennial local elections (section 19R).
- 2 It must issue guidelines that identify the matters a local authority should take into account when carrying out a review of representation (section 19ZI).

Local Authority Reorganisation (Property Transfers) Act 1990

This Act authorises the Commission to investigate property dealings of any former local authority between 14 November 1988 and 31 October 1989 and, if the Commission considers it appropriate, to require those dealings to be rectified.

Electoral Act 1993

The Chairperson of the Local Government Commission is to be a member of the Representation Commission (section 28).

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New Zealand Public Health and Disability Act 2000

If the Minister of Health believes there should be an inquiry into any question concerning the union, reconstitution, or alteration of the boundaries of any district or constituency of a district health board, the Minister may ask the Minister of Local Government to refer it to the Local Government Commission, who must inquire into it and report on it (Clause 20 of the Second Schedule of the Act).

Port Companies Act 1998

The Commission may determine any matter where a regional council and a territorial authority are unable to reach agreement in respect of any function, power, duty, property, right or undertaking of a former harbour board transferred to them (section 2A).

Auckland War Memorial Museum Act 1996

If the district of a contributing authority is altered, or if an area subject to the museum levy is absorbed into the district of another contributing authority, the Local Government Commission - when exercising its powers in regard to the constitution, alteration, union or abolition of the district of a territorial authority - may:

- i. review the effect of levies and differential factors on the matter that it is considering; and
- ii. make whatever provision on the matter, and for whatever period, that it thinks appropriate (section 23 (6)).

Auckland Metropolitan Drainage Act 1960

If objections are received to proposals to alter the boundaries of the Auckland metropolitan drainage district or the district's inner area, then the Governor-General may direct the Local Government Commission to inquire into and report on the proposals (section 8(3)).

Museum of Transport and Technology Act 2000

If the Museum Board and the Museum's Electoral College cannot agree on an arbitrator to determine the amount of the museum's levy, the Local Government Commission is to appoint an arbitrator (section 20(10)).

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