



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

SUBMISSION

by the

**New Zealand Council of Trade Unions –
Te Kauae Kaimahi**

on the

**Local Government Act 2002
Amendment Bill**

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1. Introduction

- 1.1 The New Zealand Council of Trade Unions – Te Kauae Kaimahi (CTU) is the internationally recognised trade union body in New Zealand. The CTU represents 39 affiliated trade unions with a membership of over 350,000 workers.
- 1.2 The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Runanga o Nga Kaimahi Māori o Aotearoa (Te Runanga) the Māori arm of Te Kauae Kaimahi (CTU). Te Runanga represents approximately 60,000 Māori workers.

2. CTU Membership

- 2.1 Approximately 16,500 workers are employed in local government services in New Zealand. These workers include administrators, librarians, call centre workers, planners, engineers, policy analysts, dog control officers, waste removal, processing and recycling service workers, construction workers, maintenance workers, builders and health, environmental and social services workers.
- 2.2 These workers are vital to the delivery of strong public services. Six CTU affiliates have members in local government. The Public Service Association (PSA) has the biggest coverage and represents approximately 5,500 workers. The Southern Local Government Officers Union and the Amalgamated Workers Union each have a sizeable number of workers employed in local government. Other CTU affiliates with members working in local government are the Engineering Printing and Manufacturing Union, the National Distribution Union and the New Zealand Education Institute.
- 2.3 However, like our affiliates, the CTU's interest in local government is wider than just workers directly represented by their unions. Local government has an impact on the lives of all New Zealanders, providing public goods and

responding to diverse community needs. The role of local government is vitally important in people's daily lives, in responding to the challenges facing communities and to specific new challenges such as climate change.

3. Summary

- 3.1 The CTU has major concerns about this Bill with its intention to limit consultation, redefine and limit council services, put a cap on spending, encourage the contracting out of local government services and allow for the effective privatisation of water services.
- 3.2 Its effect is to reduce openness and transparency while at the same time increase private sector pressure on local authorities to privatise or contract out major aspects of local services. The combination creates an environment in which private profit is favoured at the expense of community control in a climate of minimal public scrutiny.
- 3.3 We believe the impact of this Bill will be to reduce the quality of services to local communities and lessen democracy. The stated purpose of providing for greater accountability is at odds with the clauses that repeal consultation processes and limit the services a council may provide.
- 3.4 The introduction of an arbitrary defined spending cap would restrict local authorities' and local communities' ability to respond to local needs. Defined spending caps are also an indirect way of pursuing outsourcing and privatisation agendas in relation to local government services.
- 3.5 The enabling provisions to privatise public services do not line up with the compelling overseas evidence of damage caused by failures when local government services are privatised, and the trend for countries and local governments to reclaim services that have been privatised.
- 3.6 Access to water is a fundamental human right and water must remain in the management, operation and control of directly-accountable local government. The extended 35-year cap on the term of a public-private

partnership arrangement is a further threat to this accountability around provision of water services.

- 3.7 While privatisation, contracting out and spending caps are not necessarily mandated by this Bill, it strongly tips the playing field in favour of these failed policies.

4. NZCTU Policy

- 4.1 The CTU policy on public services is to support the provision of strong public services that encourage democratic processes, protect communities and the environment and underpin a modern and sustainable economy. The CTU supports public services that provide integration and accountability to citizens through public ownership and delivery.

- 4.2 In the 1980s and early 1990s many New Zealand public services were reduced, devolved or made to compete with privately provided services. Public services were contracted out and privatised. The outcome of this was distress, poverty, polarization and a fragmented and greatly weakened public sector.

- 4.3 This Bill, with its enabling provisions for the delivery of local government services through privatised models, heads in that same direction. The CTU strongly opposes the use of for-profit operators to deliver services that are essential such as the provision of water.

5. Defining Core Services

- 5.1 The CTU believes there are significant problems with the insertion of a new Clause 11A into the Local Government Act to define core services as network infrastructure; public transport; solid waste collection and disposal and the avoidance or mitigation of natural hazards; libraries, museums, reserves, recreation facilities and other community infrastructure.

- 5.2 Not listed are activities that many communities would define as core such as cultural activities that build community participation, community housing, economic development, or protection of the environment. And there are some activities listed that other local authorities would not define as core.
- 5.3 The CTU believes it is unnecessary to define core services. The review in 2007¹ by the Local Government Commission found no evidence that councils had expanded their activities as a result of the 2002 Local Government Act.
- 5.4 The definition of core services has proven equally vexed in other sectors. In 1995, as part of the New Zealand health reforms, it was proposed to develop an explicit core of services to which all New Zealanders would have access. It was not possible to get clear agreement on a "core" list, and the exercise was shelved.
- 5.5 Defining core services is problematic because of the diverse needs of our communities, the way those needs change with time, and the importance of communities themselves deciding what is core for their region. It is local communities who should maintain the right to define their priorities. If anything is "core", it is the right for electorates to set their own priorities. That is "core" to the democratic process and to accountability.

6. Investing and undertaking commercial activities

- 6.1 The CTU believes there are significant problems with Clause 6 of this Bill, requiring each local authority to satisfy itself that the expected returns from investment in equity securities or commercial activities are likely to outweigh the risks inherent in that investment.
- 6.2 On the one hand this is unnecessary if it is intended to ensure prudent investment. Such requirements are already covered in, for example, Clause 14 (f) and (g) and 101(1) of the existing Act.

¹ Local Government Rates Inquiry (2007), Funding Local Government.

- 6.3 On the other hand, when read in conjunction with the proposed Clause 17 (inserting a new Clause 101A (3)(d)) which requires the local authority to specify “its quantified targets for returns on [financial] investments and equity securities”, it places a narrow financial interpretation on the meaning of “returns” to investment. In the context of local government, returns to investment should be acknowledged to include social, environmental and economic returns to the community and region, not simply the financial returns to the particular investment.
- 6.4 It may well be that the involvement of a local authority in an activity is of considerable benefit to its region or community even if there is a “risk” of low or uncertain returns financially from the money invested. The investment of funds by local (or central) government frequently has wider objectives and is not solely for financial purposes.
- 6.5 The clause therefore restricts the ability of local authorities to enter into activities which may be of benefit to their regions and communities.

7. Fiscal Envelope

- 7.1 The CTU strongly opposes the provisions in Clause 17 of this Bill (introducing new section 101A(3)(b)) that would introduce a cap on local government funding and therefore on its spending. The section requires each local authority to have a financial strategy which is part of its long-term plan and be “for all of the consecutive financial years covered by the long-term plan” which is at least ten years. The subsection requires “a statement of the local authority’s— (i) quantified limits on rates, rate increases, and borrowing”.
- 7.2 There are many reasons to oppose this. There is no ‘right’ level of government spending – either local or national. The proposal wrongly takes for granted that private provision of services is always more efficient. The quality of spending matters as well as the quantity, and the situation matters too. Local authorities also have a stabilising role in times of economic crisis.

- 7.3 Setting a cap assumes that the current rate of spending is either ideal or too high. A local authority may find during the currency of their financial strategy that there are services more efficiently provided by it than by the private sector, or the private sector fails to provide services in sufficient quantity or fails to provide for people's needs. With a cap, it will be unable to respond to this with a consequent loss in efficiency and/or services for the community or region.
- 7.4 For example a number of local authorities have in the past and are currently involved in creating high speed internet infrastructures in their regions. The private sector has failed to provide this on its own or has provided it at such a low level of coverage or quality that the future of other parts of the local economy are put at risk or its development is undesirably constrained.
- 7.5 Unless anticipated up to ten years in advance, the proposed cap would prevent a local authority from taking that course of action, or at the least mean that the local authority would be able to react only very slowly and inflexibly.
- 7.6 There are many other examples of local governments taking initiatives that have enhanced the development of their regions or communities, including responding to housing shortages or lack of affordable housing, public transport innovations, and sponsoring events which have brought visitors to the region, which would be difficult, cumbersome or impossible under these rules.
- 7.7 A local authority may also find that services are underfunded either historically or as the result of unforeseen circumstances. With a cap it will be forced to cut other services in order to ensure important services continue.
- 7.8 The experience with the Tax Payer's Bill of Rights in Colorado, where a similar policy was introduced, was that local authorities stripped away essential public services such as street lighting and public car park maintenance to comply with caps.

- 7.9 There is no ideal level of spending. It is quality of spending, not quantity, that counts. Comparing spending levels between authorities is fraught with difficulty because different authorities may be providing different levels of services which may be entirely appropriate for the region and in the views of their electorates.
- 7.10 Local authorities also have a role to play in maintaining activity in the economy during an economic recession such as the current one. Had there been a cap on government spending at the national level during the recent economic crisis New Zealand could well have gone into much deeper recession or depression. That was internationally accepted. Local authorities can contribute in just the same way by, for example, bringing forward construction projects, or providing work for people thrown out of work (perhaps with central government financial assistance). At present they can fund this additional expenditure from borrowing, but under the capped funding proposal would not be able to react as swiftly.
- 7.11 Perhaps the intention of the proposal is that services should be cut where new spending is required, that local authorities should be hamstrung in expanding services even where there is a clear need and rationale, and that they should not be able to play any part in assisting a community in difficult economic times. However, these are all fundamental matters which should be decided by the democratic process including elections and full community consultation. The proposed limitations are another affront to that process.
- 7.12 It is not clear how mandatory the spending cap is made by the provisions of this Bill. Whether mandatory or not, the concept of a spending cap is overly simplistic, undemocratic, and impedes good policy making.

8. Removing Consultation

- 8.1 This Bill contains many clauses that claim to remove “unnecessary consultation”. The CTU believes this is very negative and a backward-looking approach. As well as legislating for antidemocratic processes,

removing the statutory requirements to consult must result in reduced participation of local people in their own communities and local government.

- 8.2 The Minister’s information release in relation to this Bill states that the current consultation framework, “can lead councils to carry out repetitive and expensive consultation on the same issue”, and that the changes proposed in this Bill will, “enable councils to decide for themselves how and when to obtain views from affected parties”.
- 8.3 However, this view ignores the substance of the existing consultation process, which allows the community a real say in defining what the actual problem is and how it will be evaluated – not just a final “yes” or “no” on the “best” option. Rather than viewing such a process as a bad thing, this rich sort of decision-making should be recognised as the basis for building robust community consensus.
- 8.4 Equally wanting “councils to decide for themselves” envisages councils as separate from the residents who elect them. The current Act sets out a process – not an outcome – which actually helps individual communities to reach unique solutions.
- 8.5 The CTU strongly opposes any moves to reduce processes that ensure communities are consulted and participate in council decisions. Though citizens have a say in their local councils through elections, the ballot box is not enough to ensure citizens are fully involved in all the decisions that affect their lives and their communities.
- 8.6 The Bill is contradictory in wanting to ensure that local authority decision making is “clear transparent and accountable” but at the same time removing significant elements of consultation. The task should not be how to reduce consultation but how to strengthen the process and ensure is it relevant and accessible for all citizens.
- 8.7 Real consultation involves a commitment to communicate and engage with communities on issues and take genuine account of their views in designing

and implementing policies and actions. In this way consultation increases community understanding, improves the buy-in by people to local government decisions, results in fewer disputes, and contributes to better long term processes and plans.

8.8 There are vital and controversial local authority activities for which this Bill severely reduces or removes the responsibility to consult. To give just one example, the repeal of Section 88 (Clause 11) means that local authorities need no longer use the special consultative procedure when proposing to privatise or contract out council services, or move them to a commercial footing by transferring them to a council-controlled organisation.

8.9 The accountability of local authorities with regard to privatisation and contracting to the private sector is further reduced by the replacement of Section 102 (in Clause 18) requiring authorities to have policies on these matters, or to consult on policies which affect their investments and debt levels. The repeal of Section 107 (Clause 23) on requirements relating to policies on partnerships with the private sector adds to the problem. For such contentious matters of fundamental importance to the functions of local government, these proposals are wholesale breaches of democracy and accountability.

8.10 We submit that there should be no removal of local authority's expectations or requirements to consult with the community.

9. Changed Requirements for the Long Term Council Community Plans

9.1 The Department of Internal Affairs summary paper on this Bill states that currently the Long Term Council Community Plan (LTCCP) "has to contain a vast amount of information, much of which is non-strategic in nature and of little interest to the average ratepayer"². However, it is unclear how the proposals in this Bill would improve the situation. On the one hand the Bill requires a significant amount of financial information to be added. On the

² Department of Internal Affairs, "Decisions for better transparency, accountability and financial management of local government", 29 April 2010

other hand, strategic information of significant interest to ratepayers has been removed, including (Clause 14) “a decision to construct, replace, or abandon a strategic asset”, and “a decision that will, directly or indirectly, significantly affect the capacity of the local authority, or the cost to the local authority” of any activity in the Plan.

- 9.2 Information about service provision has been reframed away from how the particular costs of any service will be met towards a methodology more accommodating of private provision. The CTU is opposed to private provision of what should be public services, and our comments regarding loss of consultation also apply in this context. But the particular issue here is that private providers will not have to be measured on how they charge. It appears that accountability for service charges is regarded as a “barrier” to private provision.

10. Private Sector to Delivery Local Authority Services

- 10.1 It is stated that provisions in the Bill will level the playing field to better enable the private sector to deliver local authority services. However, removing the requirement for councils to have policy on partnerships (Clause 23) with the private sector removes an important accountability document. Given the general public’s opposition to privatisation, the partnership policy is a particularly important accountability document.
- 10.2 When the Minister for Local Government introduced this Bill he said that, “There will be more opportunity for public-private partnerships and the reduction of restrictions on the use of the private sector to deliver local authority services,” but that, “It is important to note, however, that this Bill is not a means towards privatisation of local government assets”³.
- 10.3 To make such a statement about a bill designed to promote Public-Private Partnerships (PPPs) is – at best – ingenuous. Rather than ride roughshod

³ Rodney HIDE, Press Release “Local Councils to be held more accountable”, 29 April 2010

over community concerns about privatisation, these provisions requiring a policy on private sector partnership should be retained.

- 10.4 Ironically, the Cabinet paper underpinning this Bill describes the repeal of the partnership policy requirement as a minor legislative change, "because few councils enter into public-private partnerships" and "preparing a policy is a wasteful use of resources".

11. Public-Private Partnerships in Local Government

- 11.1 The view that PPPs provide infrastructure and other assets more cheaply than direct taxpayer funding is erroneous. Private finance is rarely cheaper than government funding. In addition, the profits of private providers become an added cost to ratepayers or service users.
- 11.2 At the same time there is considerable evidence that private companies frequently make excessive profits from such "partnerships" and that they frequently fail to provide good outcomes for rate and tax payers.
- 11.3 In Britain a House of Commons report into London Underground PPP schemes concluded that engineering companies made profits of 18 to 20 percent – a third higher than the norm for private finance companies. The House of Commons public accounts committee chairman noted a great deal of uncertainty over how PPPs lead to improved services⁴.
- 11.4 PPPs rarely deliver what they promise but rather entail high costs, poorer services, loss of jobs and poorer working conditions. The word partnership in PPPs is misleading. PPPs are usually nothing to do with "partnership" but more a complicated way of shifting expenditure from the local body or government's books and leaving future governments and generations with long-term higher costs.
- 11.5 The handing over of public services for PPPs to run also raises critical questions about the boundary between public and private responsibility in

⁴ Robb, A. Newberry, S. PPP schemes have little to offer taxpayers , NZ Herald Friday, November 05, 2004

respect of delivering public services. Privatisation and commercialisation of public services have often reduced the scope and quality of services, undermined public sector unionism, downsized the labour force and cut the pay and employment conditions of workers. Unions have witnessed first hand the reduction in the quality of services and erosion in conditions of employment for the many thousands of workers who deliver services in the health and aged care sectors through a contracted-out service model.

- 11.6 A report commissioned by the European Federation of Public Service Unions (EPSU) makes it clear that PPPs suck up public funding, increase risks to public finance and in general are a bad way to spend taxpayers' money. This report concluded that PPPs do not promote the public interest, are a poor instrument for generating new investment and have a bad record of creating risks while continuing to require government guarantees which increase contingent liabilities and threaten budgets.⁵

12. Reducing Controls and Private Provision of Water Services

- 12.1 It is claimed this Bill will allow ratepayers to exert greater influence over the activity of councils. However, in relation to the provision of water services, this Bill will do the exact opposite.
- 12.2 The removal of the requirement for councils to maintain control of the management of water services will risk setting up a framework that incentivises private companies to profit by running down water assets. Councils will continue to have responsibility for pricing, leaving private managers only empowered to cut costs to improve their profitability. Whatever initial scope there might be for "efficiencies", over time greater profits will only be possible through cuts in the quality of maintenance and the service.
- 12.3 Private providers will not have the same direct accountability to the public as local government and – given the proposed extension of maximum

⁵ Hall, D. (2010) More public rescues for more private finance failures: a critique of the EC Communication on PPPs, Public Services International Research Unit

contracting terms – it might be 35 years before the impact of any cuts might be exposed.

- 12.4 The extended 35-year cap on the term of a joint arrangement is a further threat to accountability around provision of water services. When the Regulatory Impact Statement (RIS) argues that public-private partnerships "typically require a longer timeframe for them to be workable", it means workable from the perspective of private providers. In the case of New Zealand's previous experience with private provision of water services that would appear to mean utility multinationals and the meaning of workability would appear to mean that such projects are not profitable enough in a 15-year time frame.
- 12.5 The potential profitability for commercial providers is inverse to the risk for councils as these contracts are extended. Thirty-five years would be a very long time to be stuck with a rapacious multinational controller of water infrastructure. This is especially true for a local authority which has legislative responsibility to provide water services and is required to own all the assets, but has lost control over their management.
- 12.6 Thirty-five years is also a period over which there will be significant changes in requirements and community attitudes making it impossible to design a contract that can anticipate all needed provision for such changes. Thirty-five years ago, would Christchurch local authorities have anticipated that dairying would be a major activity in Canterbury, making overwhelming demands on both quantity and quality of water supplies? Would any city have had the same environmental, health and quality standards, and the same pattern of demands for water (whether domestic or industrial) as they do now? If such a contract has review periods then there is either loss of certainty for the private sector party (negating the purpose of a 35 year term) or that party is put in a monopoly provider position which can resist changes or force excessive increases in payment for them.
- 12.7 The RIS's assessment of benefits, costs and risks of promoting greater private provision is illuminating. The possible benefits that are identified are

not specific to private provision, small and not universally available. Even in general the RIS states, "It is not feasible to identify either potential savings or costs". The primary benefit is identified as greater access to technical expertise, which does not require a PPP at all. And the RIS also acknowledges that only metropolitan councils will ever be likely to use the new PPP arrangements.

12.8 In contrast, the RIS makes the risks very clear. It cites the Auditor General's report on the Papakura District Council's PPP for water services in the 1990s which, among other things, found the private provider did not provide adequate information to the Council, the performance indicators agreed were too limited and asset management was poorly executed.

12.9 Globally, 90 per cent of the world's water supply is publicly provided. The two countries that make the greatest use of privatised water services are the United Kingdom and France. In France, where multinationals Veolia and Suez supply 8 out of 10 citizens with water, many municipalities want to get rid of these commercial arrangements as soon as possible. Indeed, more than 40 French municipalities and urban communities including Paris and Grenoble returned water services to public hands during the ten years to 2008⁶. Lack of transparency, poor water quality, continual cost increases, failure to expand and upgrade networks, and monopoly abuse were among the problems. The municipalities also have great difficulty monitoring whether the amounts in the billings correspond to the services performed and if fees paid in are really being used for restoring the pipes.

13. Conclusion and Recommendations

13.1 Accountability to citizens is reduced by provisions that reduce consultation and impose limits on services and spending. This Bill is strongly directed towards supporting business and financial interests and greatly weakens community participation, which is at the heart of local government.

⁶ "Water flowing back into public hands", by Julio Godoy, Inter Press Service News Agency, 23 June 2008.

13.2 The enabling provisions in this Bill to privatise local government services will reduce accountability for services that citizens consider basic and fundamental rights. Such moves fly in the face of emerging evidence from other countries warning against the path of privatisation of local government services.

13.3 In particular, the CTU recommends the following changes to this Bill:

- The removal of Clause 5 (inserting new Clause 11 A into the Act) defining core services.
- The removal of Clause 6 (inserting a new Clause 101A (3)(d)) excluding non-financial returns in the evaluation of investment.
- All expectations and requirements on councils to consult should be retained.
- The removal of Clause 17 imposing fiscal caps.
- The retention of the requirement that councils to have policy on partnership with the private sector.
- The abandonment of provisions in the Bill designed to promote privatisation of water services.