

INTERNAL AFFAIRS

Te Tari Taiwhenua

Local Government Briefing

Hon Paula Bennett
Minister of Local Government

Copy to: Hon Peseta Sam Lout-liga
 Associate Minister of Local Government

Title: Policy briefing: Statutes Amendment Bill (No 4) – proposed amendments to Local Government Official Information and Meetings Act 1987

Date: 27 May 2014

Key issues

The Government Administration Committee has requested information on proposed minor amendments to the Local Government Official Information and Meetings Act 1987 contained in the Statutes Amendment Bill (No 4). Your approval is sought to the Department's response to the Committee.

Action sought

Approve the draft response to the Government Administration Committee attached to this briefing; or
advise the Department of any changes required to the response.

Timeframe

By 4.00pm, Wednesday 28 May 2014

Contact for telephone discussion (if required)

Name	Position	Telephone		Suggested first contact
		direct line	after hours	
Marguerite Quin	Senior Policy Analyst	04 495 9348		✓
Anthony Richards	Policy Manager	04 494 0644		

Return to: Marguerite Quin, L7, 46 Waring Taylor St
 DMS file reference: PLG-3185-6 4022727DA
 Ministerial database reference: LG201400344

Purpose of briefing

1. The Government Administration Committee (the Select Committee) is considering the Statutes Amendment Bill (No 4) (the Bill). The Select Committee has requested advice on proposed amendments to the Local Government Official Information and Meetings Act 1987 (LGOIMA).
2. The Ministry of Justice is coordinating the advice to the Select Committee and requires a response from the Department, approved by you, on the LGOIMA amendments by 5.00pm, Wednesday 28 May 2014.

Background information

3. Statutes Amendment Bills are omnibus bills designed to provide a legislative vehicle for minor technical and non-controversial amendments to existing statutes. The Bill was introduced on 7 February 2014 and had its first reading and was referred to the Select Committee on 16 April 2014. In addition to the LGOIMA, the Bill amends the following acts within the Local Government portfolio (the Select Committee has not requested advice on these):
 - Local Government Act 1974;
 - Local Government Act 2002 (LGA02); and
 - Local Government (Auckland Council) Act 2009.
4. Each of the proposed amendments contained in the Bill has received Ministerial approval and full cross-party support. Ministerial approval is required to any changes to the proposals. There is one change that we are seeking your approval to (discussed in paragraph 9 below).
5. The Department is seeking the late inclusion in the Bill of minor amendments to the Local Electoral Act 2001 and LGA02 to correct a drafting error in the Local Electoral Amendment Act 2013. The Associate Minister of Justice is currently seeking cross-party support to include these amendments in the Bill.

Proposed amendments to LGOIMA

6. The proposed amendments to the LGOIMA would implement aspects of the Government's response to the 2012 Law Commission report on the review of official information, *The Public's Right to Know*. Nine of the proposed amendments are consistent with proposed amendments to the Official Information Act 1982 (OIA) contained in the Bill. The other two amendments seek to better align the LGOIMA with the OIA.
7. A summary of each proposed amendment to the LGOIMA is contained in the draft response to the Select Committee in the attached Appendix to this briefing.

Proposed response to Select Committee

8. The Department is satisfied that, with one exception, the proposed amendments to the LGOIMA meet the requirements for inclusion in the Bill (technical, short and non-controversial).
9. The exception is clause 49(1) of the Bill which amends section 2(1) of the LGOIMA by adding a definition of "legal professional privilege". The proposed definition is based on the definition of legal professional privilege in the Evidence Act 2006, which applies for the purposes of disclosure in a court proceeding. This raises the issue of whether information could be withheld on

the grounds of legal professional privilege in the absence of a court proceeding. Given this unresolved policy issue, we consider that the Bill is not the appropriate legislative vehicle for progressing this proposed amendment.

10. The draft response to the Select Committee notes that you agree to clause 49(1) being deleted from the Bill. The Minister of Justice has agreed to delete the equivalent amendment to the OIA from the Bill for the same reason.
11. We have liaised with Ministry of Justice officials to ensure our response is aligned with the Ministry's response on the proposed OIA amendments.

Recommendations

12. The recommendations are that you:

- a) **Agree** to the Department's response to the Government Administration Committee's request for advice on proposed amendments to the Local Government Official Information and Meetings Act 1987 contained in the Statutes Amendment Bill (No 4); or **Yes/No**
- b) **advise** the Department of any changes required to the response by 4.00pm, Wednesday 28 May 2014. **Yes/No**



Anthony Richards
Policy Manager

Hon Paula Bennett
Minister of Local Government

/ /2014

Appendix

The Government Administration Committee is considering the Statutes Amendment Bill (No 4). The Committee has requested advice on proposed amendments to the Local Government Official Information and Meetings Act 1987 contained in the Bill. The following forms the Department of Internal Affairs' response.

Clause	Rationale for amendments being suitable for a SAB
<p>Clause 49(1) - provides that legal professional privilege for the purpose of the LGOIMA means legal professional privilege as defined in the Evidence Act 2006.</p>	<p>Amendment to be deleted This amendment (and the equivalent amendment to the OIA) is no longer appropriate, as it raises an unresolved policy issue regarding legal professional privilege. The Minister of Local Government has agreed to the proposal being removed from the Bill. The Ministry of Justice will therefore recommend in its Departmental Report that the Committee remove clause 49(1) from the Bill.</p>
<p>Clause 49(2) - clarifies that information held by a person engaged by a local authority as an independent contractor is deemed to be held by the local authority for the purposes of the LGOIMA.</p>	<p>Amendment for consistency with OIA This amendment will ensure consistency with the OIA by clarifying that information held by an independent contractor engaged by a local authority is deemed to be held by the local authority for the purpose of the LGOIMA. This will clarify the intent of sections 2(3) and 2(6) of the LGOIMA.</p>
<p>Clause 50 - clarifies that information should be progressively made available.</p>	<p>Amendment for consistency with OIA This amendment will ensure consistency between the purpose of the OIA and the LGOIMA. As noted by the Law Commission, there appears to be no justification to make a distinction between local and central government when it comes to the principle of open government.</p>
<p>Clause 51 - aligns the two tests within the LGOIMA relating to legal professional privilege.</p>	<p>Amendment to align wording within LGOIMA This amendment will improve consistency within the LGOIMA and with the Privacy Act 1993 by aligning wording. Official information will be able to be withheld if "withholding the information is necessary to avoid a breach of legal professional privilege". Currently official information is able to be withheld to "maintain legal</p>

<p>Clause 52 - clarifies that a request for official information may be communicated in any form (including orally) and does not need to refer to the LGOIMA. Enables a local authority to ask for an oral request to be put in writing.</p>	<p>professional privilege". The Law Commission recommended the amendment. The Office of the Ombudsman has submitted that it would prefer the "maintain legal professional privilege" wording to be consistently used. This will be addressed in the Ministry of Justice's Departmental Report on the Bill. The same amendment is proposed to the OIA.</p> <p>Amendment to clarify existing law As the law currently stands, requests for official information do not need to be made in writing and do not need to refer to the LGOIMA. However, this is not made explicit in the LGOIMA. This amendment simply clarifies and makes express the current law. It also enables a local authority to ask for the request to be put in writing for clarification purposes. The Law Commission recommended the amendment. The same amendment is proposed to the OIA.</p>
<p>Clause 53 - clarifies that a partial transfer of an official information request is permitted.</p>	<p>Amendment to enshrine Ombudsman-approved practice This amendment will make it explicit that partial transfers of official information requests are permitted so long as the normal transfer procedure is followed. This enshrines into law a common practice supported by the Office of the Ombudsman. The Law Commission recommended the amendment. The same amendment is proposed to the OIA.</p>
<p>Clause 54 - clarifies that, if a request for official information is amended after consultation with the requester, the revised request is to be treated as a new request for the purpose of the 20 working day time limit. A local authority will not receive the benefit of this provision unless it has made a demonstrable effort to clarify the request within seven working days.</p>	<p>Amendment to clarify existing law This amendment will clarify that if a person amends their request for official information, the revised request may be treated as a new request as far as time limits are concerned. The amendment reflects a common practice by agencies and is supported by the Office of the Ombudsman. The Law Commission recommended the amendment. The same amendment is proposed to the OIA.</p>
<p>Clause 55 - puts beyond doubt that official information is able to be released electronically.</p>	<p>Amendment to enshrine Ombudsman-approved practice This amendment will expressly state that information can be released electronically. Electronic release is already a generally accepted practice supported by the Office</p>

<p>Clause 56 - clarifies that a local authority must make 'reasonable efforts to locate' the information before refusing a request on the grounds that the information requested cannot be found.</p>	<p>of the Ombudsman. To keep up with the increasing amount of information that is supplied electronically, it is preferable that this be made clear in the Act. The Law Commission recommended the amendment. The same amendment is proposed to the OIA.</p> <p>Amendment to make explicit an implicit requirement in the LGOIMA This amendment will put beyond doubt that an agency may refuse a request where the information requested does not exist or cannot be found "after taking reasonable steps to locate the information". It is implicit in the LGOIMA that to refuse a request on the grounds that it does not exist or cannot be found, an agency must first take reasonable steps to look for the information. This amendment would make that obligation explicit. The Law Commission recommended the amendment. The same amendment is proposed to the OIA.</p>
<p>Clause 57(1) - clarifies that an Ombudsman can hear complaints under LGOIMA that a local authority has failed to decide a request "as soon as reasonably practicable".</p>	<p>Amendment to improve clarity This amendment will allow complaints that a local authority has failed to decide a request for official information "as soon as reasonably practicable", even where the 20 working day limit has not yet expired. It is currently unclear whether complaints under LGOIMA can only be made once the 20 working days has passed. For this reason, such complaints are currently heard by an Ombudsman under the general investigation power in the Ombudsmen Act 1975. It is appropriate that complaints about timeframes are addressed in the LGOIMA rather than the Ombudsmen Act. The Law Commission recommended the amendment. The same amendment is proposed to the OIA.</p>
<p>Clause 57(2) - clarifies that an Ombudsman can notify the Chief Archivist if a request is refused on grounds that may indicate the Public Records Act 2005 has not been complied with.</p>	<p>Amendment to improve clarity This amendment will provide that an Ombudsman may notify the Chief Archivist if a request is refused on grounds that the information does not exist or cannot be found, is not held by the agency, or cannot be made available without substantial collation or research. While this notification is not currently prohibited in the law, this amendment will clarify its acceptance. The same amendment is proposed to the OIA.</p>