

**Local Government  
(Members Remuneration and Trading Enterprises) Amendment Bill  
Summary of Issues and Possible Recommendations**

**Remuneration**

This part of the Bill would remove the responsibility for setting elected members salaries, allowances and expenses from the political arena and pass the responsibility to the Higher Salaries Commission. The Minister of Local Government would have no role in determining salaries or meeting allowances for elected members. Similarly the Fees and Travelling Allowances Act 1951 would cease to apply to local authorities.

*Local Government New Zealand* welcomed these changes when the Minister of Local Government announced these at the 2000 *Local Government New Zealand* Conference.

**Scope of Determinations**

Section 101ZZF sets out the scope of the issues that the Commission is expected to make determinations on, including the range of positions that are covered (chairpersons, deputy chairpersons, committee chairs and members of local authorities and community boards), and a list of powers. The Commission must make determinations of salaries, allowances and expenses.

An omission from the list of powers in section 101ZZF(2) is the power to make determinations in relation to expenses.

The purpose of sections 101ZZF(g) and (h) is to allow the Commission some flexibility to deal with similar positions within the same local authority e.g. determine that the work of the Chairman of the Finance Committee is different from the rest and should be remunerated differently. It is difficult to see that the Commission will make much use of these powers – the information required and workload necessary to make these kinds of judgement would provide a significant strain on the Commission's resources.

**Recommendation**

**That section 101ZZF be amended by including a new criteria (c) allowing the Commission to make rules with respect to the reimbursement of expense or loss incurred by elected members in the course of their duties.**

## Criteria

Section 101ZZG contains a list of criteria which the Commission must have regard to when determining elected members remuneration. Of these criteria, (b), (c) and (d) are taken from the Higher Salaries Commission Act 1977. Criteria (a) is included to ensure that the Commission makes determinations of salaries and allowances which take council size into account.

An interesting omission of this list of criteria is that nowhere is the Commission directly required to have regard to the actual requirements of the position concerned. Under the present system the Minister of Local Government is required to do so. *Local Government New Zealand* believes that the fairest means of determining any honoraria is by some type of “job-sizing”. It is difficult to see how the Commission could utilise some of the powers it has in section 101ZZF without considering requirements of the position, so adding this to the list of mandatory criteria should not pose any real difficulties.

Unlike the Minister of Local Government under the present system, the Commission has been given the power to make determinations of elected members expenses. We understand the intent was that the Commission would permit the reimbursement of actual and reasonable expense or loss incurred *while acting as an elected member*. Yet the Commission has been given no statutory guidance to this effect. We recommend a further criterion to guide the Commission in dealing with expense issues.

### Recommendation

**That section 101ZZG be amended to include the following additional criteria:**

- **the requirements of the position concerned**
- **the movement of prices across the economy**
- **the need to ensure that elected member receive reimbursement for actual and reasonable expense or loss incurred in the course of their duties as an elected member.**

## Frequency of Determinations

The Bill does not give the Commission any guidance as to how often it should make determinations. The Higher Salaries Commission Act 1977 sets a maximum “shelf life” of three years on any determination of parliamentary and judicial salaries. In practice however, the Commission issues determinations of each on an annual basis, making smaller frequent adjustments avoids the political difficulties of large “one-off” increases.

In a similar manner *Local Government New Zealand* recommends that the Commission should be required to make determinations on an annual basis. The

amount of work required to make determinations on an annual basis is should not be great (these will be “updates” rather than starting from a “clean sheet”), and the costs will be met by the local government sector. A statutory requirement to make an annual determination will only codify the practice that the Commission is likely to adopt, and has adopted in the past with other salaries under its jurisdiction.

There may be some advantage in issuing determinations in the period immediately after an election rather than the period before an election (although elected members must now take the allowance there may still be some politicisation of the process e.g. “if I’m elected I’ll donate the proposed increase to charity”). A requirement to issue a determination within two or three months of an election would also assist smaller local authorities with their financial planning.

#### **Recommendation**

**That the Commission be required to issue a determination of elected members remuneration by no later than the February 28<sup>th</sup> immediately following local government elections, and no later than February 28<sup>th</sup> in each successive year.**

#### **Consultation**

The Local Government Act allows the Minister to consult any organisation that they recognise as representing the local authority or local authorities concerned. This has not been carried over to the Bill. Section 21 of the Higher Salaries Commission Act 1977 gives any person who is subject to a Commission determination the right to make a written submission and to make oral submissions to the Commission. Including a similar sort of provision in the Bill would ensure that those affected have the “right” to have their views heard. The Minister of Local Government should also be added to the list of people with the right to make submissions.

#### **Recommendation**

**That the Bill permit the following to make written submissions, and request a hearing, in respect of any determination of members remuneration:**

- **the member or members concerned**
- **any organisation recognised as representing the member or members concerned**
- **Local Government New Zealand**
- **the Minister of Local Government.**

## Levy to pay Commission's Costs

The Commission is expected to recover the costs of making a determination via a levy on local authorities. There is no duty to consult local authorities before the Commission makes such a levy, in effect "taxation without representation". Other governmental bodies that have powers to levy in this way (e.g the Valuer-General) are required to consult with *Local Government New Zealand* as the representative organisation for local government.

### Recommendation

**That section 101ZZK should be amended to include a duty on the Commission to consult with *Local Government New Zealand* before levying local authorities.**

### Other Issues ?

The Bill does not deal with taxation issues such as taxation of mileage rates, liability for ACC employer premiums etc. These issues are the subject of another Act -the Income Tax Act 1975 – and as such are under the jurisdiction of another Select Committee.

These issues were fully investigated in 1998 when elected members were offered the opportunity to change their tax status to that of an employee. *Local Government New Zealand* wrote to every elected member seeking views on the issue. The response was overwhelmingly in favour (75 percent) of continuing to be treated as self-employed for tax purposes.

It is acknowledged that being treated as self-employed does advantage some and disadvantage others. This would also be the case if the tax status were changed to "employee". Employee status would be totally inconsistent with the nature of the relationship between elected members and their local authority envisaged by the Local Government Act and therefore lacks any rational justification.

*Local Government New Zealand* is aware of concerns about liability for ACC premiums, mileage allowances, ability to claim other expenses, and is continuing to work with Inland Revenue to make sure that the same rules apply to all elected members. *Local Government New Zealand* also reminds elected members that any expense or loss incurred as an elected member, which is supported by appropriate evidence, is tax deductible.

Another issue that is sometime raised is tax-deductability of election and re-election expenses. This is not a consequence of the tax status of elected members. Tax-deductibility of expenses is permitted only for expense or loss incurred in the course of employment. Inland Revenue has two court rulings (re *Case F38* and re *Case F39*) which hold that election and reelection expenses are not incurred in the course of employment. That ruling would apply whatever the employment status of elected members is. We have previously taken advice on the likelihood that these could be overturned and have been advised that the likelihood of success would not be great.

**Recommendation**

**That no action be taken on issues arising out of elected members' status as "self-employed" for tax purposes, or on tax deductability of election and reelection expenses**

**Continuation of Salaries Past Election Night**

Our 1998 submission recommended that Mayors and Regional Council Chair salaries be treated in the same as way as MPs salaries on leaving Parliament i.e. continue for three months. Under current legislation all elected members cease being paid on the night they leave or lose office.

Our submission argued that this acts as a disincentive to stand for election especially for positions with full-time or near full-time commitments. A "transitional" period would allow time for elected members to make the transition from being an elected member to other work, retirement etc.

However our submission overlooked the fact that many Committee Chairs and some "backbench" councillors have commitments which preclude them from fulltime employment. We therefore suggest that on leaving office' all elected members receive the equivalent of one months honoraria. The additional cost of such a requirement is estimated to be \$1 .0 - 1.5 million once every three years<sup>2</sup>.

**Recommendation**

**That elected members receive an extra months honoraria on leaving office.**

**Local Authority Trading Enterprises**

The Bill also makes changes to section 594 of the Local Government Act that will

- clarify that local authorities can include social and environmental objectives in LATE statements of corporate intent (SCI)
- make LATEs subject to the Local Government Official Information and Meetings Act (LGOIMA).

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<sup>1</sup> This would apply to all members who leave office voluntarily or as a the result of an election. It would not apply to members who die, or are ousted from office.

<sup>2</sup> This estimate is based on the total salary bill (\$89 million in 1998/99), and assumes 40 percent turnover of elected members (based on 1998 figures), and that honoraria make up about half of the average members total salary.

## Social and Environmental Objectives

*Local Government New Zealand* is aware that there are conflicting opinions as to whether the term “operate as a successful business” means purely commercial, profit oriented objectives. This may be the reason why 75 percent of local authorities have LATES but of these little more than a third actually specify non-commercial objectives in the SCI<sup>3</sup>.

The proposed changes clarify that local authorities may include non-commercial objectives in the SCI without undermining local authorities’ ownership issues. Local authorities are not required to specify non-commercial objectives.

The Bill does however raise some potential for conflict of interests between commercial and non-commercial objectives and for some loss of transparency, and clarity as to how these objectives might be funded. Greater transparency and clarity can be obtained through the inclusion of an additional provision based on section 7 of the State Owned Enterprises Act. Such a provision might read

- “(1) The principal objective of the Local Authority Trading Enterprise is to operate as a successful business.
- (2) Operating as a successful business may include one or more of the following:
- (a) achieving the objectives of the shareholders as specified in the Statement of Corporate Intent
  - (b) being a good employer
  - (c) exhibiting a sense of social responsibility by having regard to the interests of the community in which it operates, including the interests of the consumers of products or services produced, and by endeavouring to accommodate or encourage these when able to do so
- (3) In subsection 2(b), the term good employer has the same meaning as in section 119F(2)
- (4) Where the shareholders wish a Local Authority Trading Enterprise to include a requirement to provide goods or services on a non-commercial basis in a Statement of Corporate Intent, the shareholders shall first enter into an agreement with the directors of the Local Authority Trading Enterprise under which the goods and services to be provided shall be specified along with the price and responsibility of the shareholders for payment of the whole or part of the price.”

### **Recommendation**

**That section 594Q be amended in the manner described above.**

<sup>3</sup> Source: *Local Government New Zealand (2000), LATES and Non-Commercial Objectives –Results from a Survey of Local Authorities*

## LATES and LGOIMA

Sections 8 and 9 of the Act make LATES subject to the requirements of the Local Government Official Information and Meetings Act (LGOIMA) 1987. In short, LATES will be subject to requirements to make any documents available to members of the public who request them unless there is “good reason” to withhold the information.

It is unclear what the underlying purpose of these changes might be. We are unaware of any significant problems which would be resolved by making LATES subject to LGOIMA requirements. The changes appear to be motivated by the actions of one or two LATES and are not necessarily the result of a lack of transparency, but may be more the result of poorly drafted Statements of Corporate Intent and inadequate governance by Boards of Directors.

The likely effectiveness of the provisions must be questioned. The types of information that people are most likely to request from LATES will involve information on costs, information on certain transactions and the like. Section 7(2)(b), (h) and (i) provide grounds for withholding most of these types of information, although the onus is on the LATE to demonstrate why these grounds are sufficient enough not to release the information.

To the extent that these provisions are effective they could severely compromise the ability of the LATE to act as a successful business. LGOIMA could (and would) be used by competitors to obtain access to information that would otherwise be confidential to the LATE. If enacted this section of the Bill would “tilt” the “level playing field” significantly in favour of private sector companies.

### **Recommendation**

**That clauses 8 and 9 of the Bill be deleted.**