

## GOVERNANCE

MAY 2014

## WINTER IS COMING AND CHANGE IS A-FOOT: LEGISLATION UPDATES

With the introduction of the **Statutes Amendment Bill (No. 4) (Bill)** the Government has responded to a need to modernise, clarify and correct a suite of statutes of direct relevance to local government. However, the Bill also includes a number of substantive amendments which, if retained, will have an effect on the procedures and processes of local authorities. These are summarised below.

### *Local Government Act 1974 (LGA'74)*

Under the LGA'74 local authorities are required to consult with the Minister of Transport and Police before closing any road under its jurisdiction. Operational responsibility for roads has been shifted to the New Zealand Transport Agency (**NZTA**). As a result, the Bill amends the LGA'74 to require local authorities wishing to close a road to consult with NZTA.

### *Local Government Act 2002 (LGA'02)*

Under the LGA'02 local authorities have the power to make by-laws allocating and enforcing alcohol ban areas. In specific situations there is a presumption that a liquid in an alcohol ban area is alcohol. The amendment to section 169A of the LGA'02 will place a mandatory requirement on a defendant charged with breaching an alcohol ban to give written notice to the prosecution within 20 working days of the hearing if they dispute that the liquid was alcohol.

### *Local Government (Auckland Council) Act 2009 (LGACA)*

The proposed amendment to section 46 of the LGACA would provide Auckland Transport with a new power to prosecute the infringement offences under the Land Transport Act 1998 relating to a failure to pay a public transport service fare.

### *Local Government Official Information Meetings Act 1987 (LGOIMA)*

Alongside amendments streamlining and simplifying the LGOIMA, the Bill proposes a number of substantive amendments as follows:

- (a) A new definition of "legal professional privilege" is included. In effect, for the purpose of the LGOIMA, "legal professional privilege" attaches to:
  - (i) communications between a legal advisor and client that were made as part of giving legal professional services and were intended to be confidential; and
  - (ii) communications received, compiled or prepared for the dominant purpose of preparing for a proceeding;

- (b) The ambit of a legitimate request under section 10 is to be expanded. As a result a local authority will be required to consider and respond to all information requests irrespective of the form and means of the communication and whether the request references the LGOIMA or not. Further, although a local authority can ask for written clarification of a request, if clarification is not given a local authority must record its understanding of the request and provide a copy of this to the person who made the request;
- (c) If a request for information is amended after consultation by the local authority with the person making the request, the amended request is treated as a new request for the purposes of making a decision on whether to provide the information. As a result, the submission of a clarification or amendment to a request will reset the 20 working day time period within which a local authority must respond to the request. Importantly, the above does not apply if a local authority itself seeks clarification or amendment of a request and this clarification is sought later than seven working days after receiving the original request. In this instance the 20 working day time frame continues to run from the day of receipt of the original request;
- (d) The provision of requested information by “electronic means” is explicitly provided for;
- (e) A local authority must explicitly undertake “reasonable efforts to locate” requested information before it can refuse to respond to the request on the ground that it cannot be found. In light of this, local authorities may wish to consider recording research trails when investigating information requests as proof that it has exercised a “reasonable effort to locate” the information; and
- (f) Amendments to the functions of the Ombudsman under the LGOIMA allow a review of the time in which a local authority responded to an information request. Local authorities need to respond to information requests “as soon as is reasonably practicable, or at the latest within 20 working days, after receiving the request”. As a result it is possible a response within the 20 working day time period could still result in a negative review by the Ombudsman if it was found that, given the nature of the request, it was reasonably practicable for the local authority to provide the information earlier.

### *Ombudsmen Act 1975 (OA)*

The Bill amends section 17 which sets out the grounds upon which the Ombudsman can refuse to investigate or further investigate a complaint. The amendment recasts section 17 in a clear, listed format. It also tweaks the wording of section 17 to expressly allow the Ombudsman to refuse to investigate a complaint on the grounds that following preliminary enquiries it is unnecessary to do so. Previously this was not provided for under the OA resulting in the inefficient requirement that a formal investigation had to be commenced, even if it was immediately followed up by a notice that further investigation was unnecessary.

### *Reserves Act 1977 (RA)*

Currently the RA provides for the transfer to local authorities of reserves vested in the Crown. The Bill provides for the corresponding ability (previously not provided for under the RA) for a local authority and the Crown to enter into written agreement to transfer to the Crown, reserves vested in and administered by the local authority. The inclusion of this provision is a direct response to the recent case of **Department of Conservation v Woolley** CRI-2010-006-1793 where the Court rejected the argument that “vesting” could be achieved through transfer of the freehold title in the reserve area from a local authority to the Crown, and suggested that the RA be amended as described above.

The Bill also proposes to remove the limitation of the application of sections 48A, 114 and 115 to “reserves originally vested in the Crown”. The effect of this amendment is that, in respect of any reserve, irrespective of its original vestment, a local authority may:

- (a) Use it for communication stations (RA section 48A);
- (b) Vary covenants, terms and conditions of licences and leases issued in respect of the reserve (RA section 114); and
- (c) Control the transfer of an interest in a licence or lease issued in respect of the reserve (RA section 115).

### *Sale and Supply of Alcohol Act 2012*

The proposed amendments to the SSAA consist of small adjustments, tweaking sections for clarity and internal consistency. Of note is the amendment to section 102 which relates to objections to licence applications. The Bill clarifies that the grounds of objection in respect of an application for a licence which is the same as that already in force at the premises and for which the same conditions are sought, is limited to the “suitability” of the applicant.

### **The next step**

Currently, the Bill is being considered by the Government Administration Committee, with a report due 16 October 2014. With the Bill able to be brought into force by Order in Council, it is possible that it could be brought into force by the end of the year.

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