

# Coversheet: Local Government Act 2002 Amendment Bill (No 2) – council-controlled organisations

Advising agencies	<i>Department of Internal Affairs</i>
Decision sought	<i>Amendments to the accountability, planning and reporting framework for council-controlled organisations</i>
Proposing Ministers	<i>Minister of Local Government</i>

## Summary: Problem and Proposed Approach

### Problem Definition

**What problem or opportunity does this proposal seek to address? Why is Government intervention required?**

*Summarise in one or two sentences*

The current accountability, planning and reporting framework for council-controlled organisations (CCOs) in the Local Government Act 2002 (LGA02) needs updating to meet modern expectations for increased accountability and transparency mechanisms for public entities.

The legislative framework was originally designed to apply to CCOs that were run as commercial enterprises and directly owned by local authorities. It has not been further developed to reflect the changing nature of CCOs and now it does not reflect the range and diversity of CCOs that exist today, or the fact that some local authorities structure CCO ownership arrangements through holding companies.

Government intervention is required to fix the problem as updating the CCO framework requires legislative change.

The Local Government Amendment Bill (No 2) currently before the House provides an opportunity to make minor amendments to the CCO framework at this point, before a wider review of the local government legislative framework begins later in 2019.

### Proposed Approach

**How will Government intervention work to bring about the desired change? How is this the best option?**

*Summarise in one or two sentences*

The operating framework for CCOs is prescribed in legislation. Legislative amendments are therefore required to make changes to the framework.

The proposed approach is to include provisions improving transparency and accountability for CCOs in a Supplementary Order Paper (SOP) to the Local Government Amendment Bill (No 2), currently before the House. Previous Ministerial direction requires any changes to the CCO framework at this time to be included in a SOP to the Bill. A wider review of the governance framework for CCOs will be carried out later in 2019.

## Section B: Summary Impacts: Benefits and costs

### Who are the main expected beneficiaries and what is the nature of the expected benefit?

#### *Monetised and non-monetised benefits*

Local authorities will benefit from increased flexibility to improve accountability and transparency mechanisms for CCOs, and to facilitate greater strategic alignment between local authority and CCO planning processes. The wider public will benefit from increased accountability and transparency over local authority and CCO operations.

### Where do the costs fall?

#### *Monetised and non-monetised costs; for example, to local government, to regulated parties*

The proposed changes are mostly enabling, so will have few associated costs to local authorities. The one proposed mandatory requirement is requiring documents to be published online. The costs of this are negligible.

### What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

The proposals in the preferred option are mostly enabling and leave it up to local authorities to determine whether to implement them. The impacts on a specific CCO will depend on its circumstances. There are few risks or possible unintended impacts.

### Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.

The proposals are consistent with the Government's 'Expectations for the design of regulatory systems'.

## Section C: Evidence certainty and quality assurance

### Agency rating of evidence certainty?

#### *How confident are you of the evidence base?*

Information about CCOs is publicly available and is informally collated by the Department. We have confirmed that a wider range of CCOs exists than was anticipated when the relevant provisions in the LGA02 were enacted, and that they operate in different contexts to what the framework was designed for.

*To be completed by quality assurers:*

Quality Assurance Reviewing Agency:
The Department of Internal Affairs
Quality Assurance Assessment:
The Department's Regulatory Impact Analysis Panel considers that the information and analysis summarised in the Local Government Act 2002 Amendment Bill (No 2) – council controlled organisations Regulatory Impact Analysis <b>meets</b> the quality assurance criteria.
Reviewer Comments and Recommendations:
The Regulatory Impact Analysis is well structured and sets out a complex technical issue clearly and succinctly.

# Impact Statement: Amendments to the accountability, planning and reporting framework for council-controlled organisations

## Section 1: General information

Purpose
The Department of Internal Affairs is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by or on behalf of Cabinet.

### Key Limitations or Constraints on Analysis

*Describe any limitations or constraints, for example:*

- *Scoping of the problem*
- *Evidence of the problem*
- *Range of options considered*
- *Criteria used to assess options*
- *Assumptions underpinning impact analysis*
- *Quality of data used for impact analysis*
- *Consultation and testing*

The Local Government Amendment Bill (No 2) is currently before the House. Previous Ministerial direction has specified that any policy changes to the CCO framework made at this time are to be included in a SOP to the Bill. This constrains the analysis as it means any options for policy changes must be within the scope of the Bill as introduced.

Substantial changes to the local government framework, including changes to the governance and delivery of services in Auckland, are therefore outside the scope of this work.

### Responsible Manager (signature and date):

Raj Krishnan

General Manager Policy

Policy, Regulation and Communities Branch

Department of Internal Affairs

## Section 2: Problem definition and objectives

### 2.1 What is the context within which action is proposed?

*Set out the context, eg:*

- *Nature of the market*
- *Industry structure*
- *Social context*
- *Environmental state, etc.*

*How is the situation expected to develop if no further action is taken? (This is the Counterfactual against which you will compare possible policy interventions in sections 4 and 5).*

The LGA02 sets out the framework for CCOs. A CCO is any entity that is controlled by a local authority or local authorities collectively. They are diverse in size, function and organisational structure. The definition in the LGA02 is very wide and includes both for profit enterprises, such as council contracting companies (for example City Care Ltd owned by Christchurch City Council), and not for profit enterprises such as the Wellington Zoo Trust.

Some entities owned by councils are excluded from the definition of CCO. Electricity businesses, energy companies and port companies are excluded from the definition of CCO as they are regulated under other statutory frameworks. This means, for example, that neither Ports of Auckland Ltd nor Orion Electricity (Christchurch's electricity lines company) are subject to the CCO provisions of the LGA02. There are also other minor exemptions.

Some CCOS are very small, while others are very large. At the small end of the scale, for example, New Plymouth District Council has three unincorporated joint ventures with individual farmers which manage farm woodlots. These are CCOs. Mayoral relief funds established after natural disaster events often fall within the definition of a CCO. At the large end of the scale, in addition to City Care, are Auckland Council's CCOs such as Watercare, Auckland Transport, and Regional Facilities Auckland.

A feature of local government CCO structures is the placing of CCOs and other businesses under a holding company. An example is Christchurch City Holdings Ltd which holds Christchurch City Council's shares in eight subsidiary companies, including the Lyttleton Port Company, Christchurch International Airport, City Care, Red Bus Ltd, Development Christchurch Ltd, Enable Services (which provides fast broadband services to Christchurch), Orion (the local electricity lines company) and EcoCentral (a waste recycling company). Christchurch City Holdings owns assets worth \$4.02 billion and had group operating revenue of \$1.04 billion in 2017/18.

The current legislative framework applies to each of these CCOs, regardless of their purpose. It is reasonable to expect that local authorities will continue to use CCOs in different ways, and the number and variations in functions and structure will increase. This will result in the legislative framework becoming increasingly not fit-for-purpose, if amendments are not made. The existing framework will continue to apply to all CCOS and will not meet expectations for increased transparency and accountability for public entities.

The Local Government Amendment Bill (No 2) proposed changes to the CCO framework. The Regulatory Impact Statement for the Bill can be found at <https://treasury.govt.nz/publications/risa/regulatory-impact-statement-options-improving-local-government-services>

## 2.2 What regulatory system, or systems, are already in place?

- *What are the key features of the regulatory system(s), including any existing regulation or government interventions/programmes? What are its objectives?*
- *Why is Government regulation preferable to private arrangements in this area?*
- *What other agencies, including local government and non-governmental organisations, have a role or other substantive interest in that system?*
- *Has the overall fitness-for-purpose of the system as a whole been assessed? When, and with what result?*

Part 5 of the LGA02 establishes the framework for the governance and accountability of CCOs and council organisations. No significant amendments to the framework have been made since 2002. Currently, the main statutory requirements are for a local authority to:

- Consult the community before setting up a new CCO;
- Appoint members of the CCO's governing body in keeping with the local authority's policy for such appointments;
- Consider and comment on the CCO's draft statement of intent;
- Describe the significant policies and objectives for the CCO in its long-term plans and annual plans;
- Regularly monitor the performance of the CCO to evaluate its contribution to the local authority's objectives for the CCO and the local authority's overall aims and outcomes;
- Report on the CCO's actual performance and achievements against its planned performance in the local authority's annual report;
- Review the cost-effectiveness of a CCO's provision of local infrastructure, local public services, or regulatory functions; and
- Consider exempting small non-profit CCOs from the accountability requirements in the LGA02 and periodically review any exemptions given.

The statutory requirements for a CCO and its board members include to:

- Achieve the objectives of its shareholders, both commercial and non-commercial, as specified in the statement of intent;
- Be a good employer;
- Show a sense of social and environmental responsibility by having regard to the interests of the community in which it operates and endeavouring to accommodate or encourage those interests when able to do so;
- Make all operational decisions under the authority of the statement of intent and constitution;
- Prepare an annual statement of intent, a half-yearly report, and an annual report; and
- Meet the requirements of Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987.

The Local Government (Auckland Council) Act 2009 also sets out an accountability framework for Auckland Council's substantive CCOs, which gives Auckland Council a wider range of accountability tools that are not available to other councils. Amendments to this Act are out of scope, except as a consequence of amendments to the LGA02.

Amendments to statutory frameworks for entities owned by local authorities, but not within the definition of a CCO, are out of scope.

An overall fitness for purpose assessment has not taken place but the Department intends to conduct a wider review of CCO governance provisions later in 2019.

### 2.3 What is the policy problem or opportunity?

- *Why does the Counterfactual constitute “a problem”?*
- *What is the nature, scope and scale of the loss or harm being experienced, or the opportunity for improvement? How important is this to the achievement (or not) of the overall system objectives?*
- *What is the underlying cause of the problem? Why cannot individuals or firms be expected to sort it out themselves under existing arrangements?*
- *How robust is the evidence supporting this assessment?*

Since the enactment of the LGA02, local authority use of CCOs has been varied. The legislative framework has not been amended to reflect the diversity of CCO arrangements that has developed since the framework was established. The legislation also does not reflect modern expectations for greater levels of transparency and accountability of public entities. Without updating the framework, local authorities will continue to use CCOs in a variety of ways without being fully transparent and accountable and without being properly aligned to local authority planning processes. The current framework:

- Gives local authorities little formal power to control their CCOs
- Does not provide for alignment between local authority and CCO planning processes;
- Has not kept pace with the evolution of local government responsibilities to iwi/Māori;
- Lacks long-term planning instruments;
- Can limit elected member oversight by placing significant CCOs as subsidiaries of holding companies. Where a local authority has indirect shareholdings in a CCO through a holding company, there is no legal avenue for the local authority to directly interact with the CCO about its statement of intent or statutory reports; and
- Can lack transparency to the public.

There is an opportunity to address some of those issues now as the Local Government Amendment Bill (No 2) is currently before the House.



## 2.4 Are there any constraints on the scope for decision making?

- *What constraints are there on the scope, or what is out of scope? For example, ministers may already have ruled out certain approaches.*
- *What interdependencies or connections are there to other existing issues or ongoing work?*

The Local Government Amendment Bill (No 2) is currently before the House. Previous Ministerial direction requires any changes to the CCO framework made at this time to be included in a SOP to the Bill. This requires any changes proposed to be within the scope of the Bill as introduced.

Broader substantial changes to the local government framework, including changes to the governance and delivery of services in Auckland, are therefore outside the scope of this work.

The Government has a work programme underway addressing the regulation and delivery of potable water, wastewater treatment and disposal and stormwater drainage (the three waters). The proposals presented in this regulatory impact analysis avoid making any pre-emptive decisions about the three waters work as those issues will be addressed separately.

## 2.5 What do stakeholders think?

- *Who are the stakeholders? What is the nature of their interest?*
- *Which stakeholders share the Agency's view of the problem and its causes?*
- *Which stakeholders do not share the Agency's view in this regard, and why?*
- *What consultation has already taken place and with whom?*
- *Does the issue affect Māori in particular? Have iwi/hapū been consulted, and if not, should they be?*
- *If consultation is planned, how will this take place, with whom and when? If is not intended, why is this?*

Officials have consulted with Auckland Council, Local Government New Zealand and the Society of Local Government Managers on the preferred option. There were no concerns with the proposals. Specific consultation with iwi/Māori is not required as we do not expect the proposals to have an adverse impact.

# Section 3: Options identification

## 3.1 What options are available to address the problem?

- *List and describe the key features of the options. Set out how each would address the problem or opportunity, and deliver the objectives, identified.*

- *How has consultation affected these options?*
- *Are the options mutually exclusive or do they, or some of them, work in combination?*
- *Have non-regulatory options been considered? If not, why not?*
- *What relevant experience from other countries has been considered?*

As any option to update the framework requires legislative change and must be within the scope of the Local Government Amendment Bill (No 2), there is only one available alternative to the status quo.

*Option One* – update the legislative framework to reflect some aspects of the Crown agent accountability framework in the Crown Entities Act 2004. These amendments will give local authorities more tools to engage with CCOs and holding company subsidiaries, align local authority and CCO planning processes, and increase transparency over CCO documents.

The amendments will:

- Require local authorities to publish CCO statements of intent (SOIs), half-yearly and annual reports online within one month of receipt;
- Extend the timelines for adopting CCO SOIs to enable better alignment between local authority and CCO planning processes;
- Enable a local authority to set a statement of expectations for a CCO. This would complement the SOI;
- Enable local authorities to directly engage with holding company subsidiaries. This will provide parallel opportunities for local authorities to comment on SOIs as well as the parent company; and
- Enable local authorities to impose additional planning and reporting requirements, including requirements to prepare asset management plans, long-term plans and thematic plans and to report progress against these.

These proposals, except those relating to publication of SOIs and reports, would be enabling, so local authorities could require these things if appropriate, according to the scale and activities of their CCOs.

The proposals in this option are limited due to the constraints on the analysis as identified in section 2.4. Only proposals that will fit within the scope of the Bill can be included in this analysis. This precludes a more substantial review of the governance framework for CCOs, which would require creating a legislative distinction between CCOs that operate for profit and those that do not.

The alternative is to do none of these things and let the status quo prevail.

### **3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?**

- *Comment on relationships between the criteria, for example where meeting one criterion can only be achieved at the expense of another (trade-offs)*

The first criterion is that the proposal will result in increased transparency and accountability of CCOs. The second criterion is that the proposal will enable greater strategic alignment between local authorities and CCOs. The first two criteria measure to what extent the proposal addresses the problem.

The third criterion is the compliance costs for local authorities or CCOs, which weighs the benefits of the proposal against the costs.

### **3.3 What other options have been ruled out of scope, or not considered, and why?**

- *List the options and briefly explain why they were ruled out of scope or not given further consideration.*

Options that include policy changes outside the scope of the Bill as introduced are out of scope of this analysis. Previous Ministerial direction requires any updates to the CCO framework at this time to be included in a SOP to the Bill. .

Making substantial changes to the accountability, planning and reporting framework in the LGA02 would require distinguishing between CCOs that are intended to make a profit and those that are not. The relevant governance provisions in the Crown Entities Act for non-profit CCOs could then be incorporated into the LGA02. Creating this distinction would require public consultation, so this option is outside the scope of the Bill.

## Section 4: Impact Analysis

**Marginal impact:** How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2? Add, or subtract, columns and rows as necessary.

*If possible use this table to provide information on monetary, as well as qualitative, costs and benefits for each of the options under consideration. Give evidence supporting your judgements, including stakeholder feedback where relevant.*

*Try to keep this table to a single side. If you find that you are having to write a lot to explain your assessment of whether each option is better or worse than taking no action under each criterion, add text under the table rather than filling the table with words.*

	No action	Option One
Increased transparency and accountability	0	+ As the proposals are mostly enabling, they will only increase transparency and accountability if local authorities choose to use the provisions.
Strategic alignment between local authorities and CCOs	0	+ The proposals will only provide for greater alignment between local authorities and CCOs if local authorities choose to use them.
Compliance costs on local authorities and CCOs	0	0 The one mandatory requirement will have a negligible cost. Compliance costs are therefore very low.
Overall assessment	0	++

**Key:**

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

## Section 5: Conclusions

### 5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

- Where a conclusion as to preferred option is reached, identify it and set out reasons for considering it to be the best approach (by reference to the assessment criteria).
- If no conclusion as to preferred option is reached, identify the judgement (eg, which stakeholders, or which criteria, are the most important) or the additional information that is needed, to enable a decision to be made
- How much confidence do you have in the assumptions and evidence?
- What do stakeholders think - in particular, those opposed? Why are they concerned, and why has it not been possible to accommodate their concerns?

Given the constraints on the analysis, Option One is the best option to enhance the accountability framework in the LGA02 while still remaining in scope of the Bill.

### 5.2 Summary table of costs and benefits of the preferred approach

Summarise the expected costs and benefits of the proposed approach in the form below. Add more rows if necessary.

Give monetised values where possible. Note that only the **marginal** costs and benefits of the option should be counted, ie, costs or benefits additional to what would happen if no action were taken. Note that "wider government" may include local government as well as other agencies and non-departmental Crown entities.

See <http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis/x/x-guide-oct15.pdf> and <http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis> for further guidance.

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
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#### Additional costs of proposed approach, compared to taking no action

Regulated parties	Will only take effect if local authorities choose to use the provisions. The only mandatory requirement has a negligible cost.	Low	High
Regulators			

Wider government			
Other parties			
<b>Total Monetised Cost</b>		Low	High
<b>Non-monetised costs</b>		Low	High

Expected benefits of proposed approach, compared to taking no action			
Regulated parties	Gives local authorities the flexibility to determine whether to use the provisions to increase accountability and transparency for their own CCOs.	Medium	High
Regulators			
Wider government			
Other parties	There is a benefit to the public from improved access to CCO accountability documents and a greater sense of transparency over local government and CCO operations.	Medium	High
<b>Total Monetised Benefit</b>		Medium	
<b>Non-monetised benefits</b>		Medium	High

### 5.3 What other impacts is this approach likely to have?

- *Other likely impacts which cannot be included in the table above, eg because they cannot readily be assigned to a specific stakeholder group, or they cannot clearly be described as costs or benefits*
- *Potential risks and uncertainties*

As the option is mostly enabling, there are no other likely impacts that have not been assessed.

### 5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

- *Identify and explain any areas of incompatibility with the Government's 'Expectations for the design of regulatory systems'. See <http://www.treasury.govt.nz/regulation/expectations>*

The proposals are consistent with the Government's 'Expectations for the design of regulatory systems'.

## Section 6: Implementation and operation

### 6.1 How will the new arrangements work in practice?

- *How could the preferred option be given effect? Eg,*
  - *legislative vehicle*
  - *communications*
  - *transitional arrangements.*
- *Once implemented, who will be responsible for ongoing operation and enforcement of the new arrangements? Will there be a role for local government?*
- *Have the responsible parties confirmed, or identified any concerns with, their ability to implement it in a manner consistent with the Government's 'Expectations for regulatory stewardship by government agencies'? See <http://www.treasury.govt.nz/regulation/expectations>*
- *When will the arrangements come into effect? Does this allow sufficient preparation time for regulated parties?*
- *How will other agencies with a substantive interest in the relevant regulatory system or stakeholders be involved in the implementation and/or operation?*

The changes in the preferred option are mostly enabling. It will be up to local authorities to determine whether to implement them. Given the wide range of CCOs that exist, it is appropriate that the provisions are enabling so it remains up to each local authority to decide which provisions are most relevant to its situation.

### 6.2 What are the implementation risks?

- *What issues concerning implementation have been raised through consultation and how will these be addressed?*
- *What are the underlying assumptions or uncertainties, for example about stakeholder motivations and capabilities?*
- *How will risks be mitigated?*

As the proposals are mostly enabling, there are few implementation risks. Local authorities may take different approaches in implementing the provisions, but it is more appropriate that the provisions are enabling so they can be tailored to a local authority's specific circumstances.



## Section 7: Monitoring, evaluation and review

### 7.1 How will the impact of the new arrangements be monitored?

- *How will you know whether the impacts anticipated actually materialise?*
- *System-level monitoring and evaluation*
- *Are there already monitoring and evaluation provisions in place for the system as a whole (ie, the broader legislation within which this arrangement sits)? If so, what are they?*
- *Are data on system-level impacts already being collected?*
- *Are data on implementation and operational issues, including enforcement, already being collected?*
- *New data collection*
- *Will you need to collect extra data that is not already being collected? Please specify.*

A wider review of the governance framework for CCOs will be undertaken later in 2019. This will assess the effects of the proposed changes to determine how the framework might be further improved.

### 7.2 When and how will the new arrangements be reviewed?

- *How will the arrangements be reviewed? How often will this happen and by whom will it be done? If there are no plans for review, state so and explain why.*
- *What sort of results (that may become apparent from the monitoring or feedback) might prompt an earlier review of this legislation?*
- *What opportunities will stakeholders have to raise concerns?*

The Department of Internal Affairs administers the legislative framework within which CCOs operate. The efficacy of the proposals will be assessed as officials evaluate the framework over time.