CHILD POVERTY ACTION GROUP

Child Poverty Action Group

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Local Government and Environment Committee

Parliament Buildings

Wellington

Submission:

Local Government Act 2002 Amendment Bill

Child Poverty Action Group thanks the Select Committee for the opportunity to submit on this important Bill. Child Poverty Action Group (CPAG) comprises a group of academics and workers in the field dedicated to achieving better policies for children. The aims of our organisation are:

- The development and promotion of better policies for children and young people.
- Sharing information and connecting with other groups with similar concerns.
- Elimination of child poverty in Aotearoa New Zealand by 2020

Along with other children's agencies, we are very concerned about the implications of this Bill on children and young people. We urge Committee members to carefully consider the impacts of this legislation on the most vulnerable children in the community, and to act in their best interests.

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We wish to speak to our submission.

Summary

[1] CPAG submits that this Bill is deeply flawed, chiefly because of the removal of 'community' from much of the existing legislation. Local government is there to serve the community, not the short-term economic imperatives of business. The imposition onto communities of core services is also deeply worrying. How can communities be expected to participate if what they believe is a core service for them has been ruled out?

[2] We also have grave concerns about central government seeking to minimise the boundaries within which local government must operate. This level of central government interference in something that affects the present and future wellbeing of so many children is alarming, and we ask the Committee to think hard about the implications of the regime set up by this Bill.

[3] As with so much policy over the last 25 years, it seems children have not been considered in the drafting of this legislation. This is our legacy to them, and we may well be leaving them nothing.

Introduction

[4] Child Poverty Action Group submits that this Bill presents a clear threat to the wellbeing of New Zealand children, removing as it does the ability of communities to have a voice in council decisions, and by effectively privatising council services and removing them from any democratic control or accountability.

[5] The stated objective of this bill is to amend the Local Government Act 2002 to "improve transparency, accountability, and financial management in local government." While CPAG supports these laudable objectives, we share others' concerns that the Bill will have the opposite effect, by eroding local democratic accountability for example through removing "unnecessary consultation". There is no indication as to what "unnecessary consultation" entails, so the Bill potentially replaces a system of consultation – however imperfect – with one of arbitrary withdrawal of community participation.

[6] CPAG opposes all the clauses in this bill that seek to 'level the playing field to better enable the private sector to deliver local authority services.' We consider the clauses which make it easier to contract out water and other services to the private

sector will diminish rather than improve councils' accountability and will not be open to public scrutiny. Moreover, the length of these contracts also serves as a barrier to accountability. Many older people will not get the opportunity to have another say as ratepayers, and a child born today will be in their mid-thirties before they get a say in the running of their own assets. This raises significant issues of inter-generational equity, and it seems that today's children are being put at risk as basic services become more expensive or simply inaccessible. We echo Professor Asher's[1] warning that New Zealand must improve the situation for the most disadvantaged children, not worsen it. We submit that there is no evidence from New Zealand's recent history to suggest that the privatisation of services (for that is what this Bill is essentially enables) improves the wellbeing of children.

[7] CPAG also has concerns with the requirement to produce a financial strategy with 'quantified limits on rates, rate increases and borrowing'. As evidenced by the number of cities and states in the US struggling with similar legislation during a recession, this requirement could potentially result in significant harm to councils and the communities they serve. We submit that it should not be the aim of local government legislation to exacerbate the hardship faced by communities during recessions such as that we are presently experiencing.

[8] There is a real risk that councils will be so financially constrained that they will no longer be able to provide quality core services. Rate caps and caps on debt levels are likely to push councils into entering into Private Public Partnerships (PPPs) so as to avoid the initial cost of capital outlay – arrangements that would not otherwise have been considered. PPPs do not, however, necessarily avoid debt rather they enable councils to defer it into the future. This too raises the issue of inter-generational equity. As well, because those services are run for a profit, ratepayers end up paying more.[2] Moreover, there is ample evidence from overseas that profits are also derived from taking shortcuts on safety and quality. Stark examples include the Ladbrook Grove rail tragedy and the collapse of the Lane Cove tunnel in Sydney.

[9] The final point about council services such as water is that they are monopolies. This, of course, is why they are attractive to private investors, having a captive market and the ability to set price. New Zealand legislation does not prohibit the charging of monopoly prices, as can be seen in our electricity industry.[3] Given the lack of consumer protection from monopoly pricing, and the absence of market competition, CPAG submits that 35-year contracts for service provision are

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[1] See http://www.cpag.org.nz/resources/articles/res1276142474.pdf.

[2] With respect to water see http://www.foodandwaterwatch.org/water/report/money-down-the-drain/money-down-the-drain-view-in-full/.

[3] Bertram, G, and D Twaddle. 2005. Price-cost margins and profit rates in New Zealand electricity distribution networks since 1994: The cost of light-handed regulation. *Journal of Regulatory Economics* 27 (3):281-307.

inappropriate. Based on overseas experience we suggest an initial 5 year term, followed by terms of no more than 15 years are appropriate.

[10] CPAG is also concerned that this Bill reduces local government to infrastructure and some arbitrarily defined core services. New Zealand's communities are diverse, with different capacities to engage with local government, and variable levels of social capital and socio-economic need. The one-size-fits all model implicit in this Bill will place some communities at risk of total disengagement. In particular ethnic communities risk being shut out of local government altogether, and these often have both the highest number and proportion of children and often with multiple needs. We submit strongly that this Bill needs to include provisions for councils to include community development, environmental protection and social cohesion, with a specific focus on the wellbeing of children in their plans.

[11] As with Auckland's local government restructuring, a revision of the Local Government Act 2002 presents an opportunity to create in New Zealand child-friendly cities.[4] The essence of a child-friendly city is a governance structure that makes space for children's best interests at the centre of local democracy and community-based decision-making. This needs to be supported by local services easily accessible by safe, cheap and environmentally-friendly transport modes such as walking and cycling. CPAG is disappointed to note that that this vision of a safe and nurturing environment for all children has been displaced by a focus on a business model of local governance.

[12] Overall, we endorse the submission of the New Zealand Council of Christian Social Services, the Auckland District Council of Social Services, and the Manukau Child Advocacy Group. There are no doubt others who have made similar submissions, and we urge the Committee to give their concerns due consideration in view of the potential very high cost for our children and grandchildren.

[13] Below we submit on the clauses contained in the Bill.

Clause 4: Interpretation of Community Outcomes

[14] We oppose this amendment to section 5(1) of the definition of "community outcomes". We strongly prefer the current definition which comprehensively includes the range of important outcomes for that district identified by consultation with the residents and businesses of that district, including outcomes delivered principally or entirely by other authorities. Communities should continue to be empowered to identify the full range of public good outcomes they want most for their district so that local authorities can advance them by whatever influence they can exercise, including by co-ordination and/or by advocacy. Local authorities should continue to be able to report back to communities on progress on their community outcomes. Local authorities have been supported by their communities in identifying and pressing for outcomes that are important for them, including job creation, public

[4] http://www.childfriendlycities.org/

health, housing, crime prevention and education, they should be able to continue to do so.

[15] We submit this definition not be amended.

Clause 5: Core services

[16] We are strongly opposed to this attempt to curtail the ability of local authorities to respond to key priority needs that their community wishes them to become involved in or to deliver on. For example, metropolitan local authorities have commonly responded to community views and needs by providing community services and community development activities, and rural local authorities by providing public health services and facilities. Examples of the inappropriateness of defining core services in the manner in Clause 5 outlines are the omission of water supply and waste water disposal, economic development and job creation, community services and development, public health services, public events and celebrations, arts and cultural facilities and programmes, and environmental protection and enhancement. The inclusion of so-called 'party-central' as a core service in Auckland is an example of recent capricious decision-making. Councils must be given the chance to choose what is appropriate for their circumstances.

[17] We also note citizens already have the opportunity to tell their council what services are core through annual business planning processes.

[18] CPAG submits this clause be deleted rather than endeavouring to make it more realistic and comprehensive. Every community is different and the legislation needs to allow for this.

Clause 6: Principles relating to local authorities

[19] We do not agree with the proposed section 14(1)(fa)(ii) which proposes that a local authority should invest in an activity only when it has been satisfied that the returns are likely to outweigh the risks. Local authorities should be able to do this also if the anticipated community benefit outweighs the risks. This is because often the private sector is not prepared to initiate or carry out such activities because of the commercial risk, but it is an activity the community has identified it very much wants. Indeed, the point of public goods such as those provided by councils is that they are goods the private sector cannot or will not provide. Moreover, the calculation of returns and risks is not a neutral, scientifically objective exercise, and is as open to political manipulation as existing methods.

[20] We submit this clause be deleted.

Clause 7: Repeal of part regarding community outcomes

[21] We are strongly opposed to the repeal of section 75(e) in view of our support for the current community outcome provisions.

Clause 8: Community views in relation to decisions

[22] We do not support the repeal of section 78(2). We are concerned that there is an underlying premise that communities are over-consulted. We submit that communities be consulted a minimum of twice, once on the general options for consideration and once on the specific proposal. Where proposals are complex or controversial, consultation may need to be more extensive.

Clause 11: Repeal of Section Requiring consultation on Mode of Delivery of a Service

[23] We are strongly opposed to the proposed repeal of section 88. This is the section requiring a Council to use the special consultative procedure when it proposes to change the mode of delivery of significant services. We strongly oppose a Council being able to contract out or privatise a service without conducting full public consultation.

[24] We submit this clause be deleted.

Clause 12: Repeal of requirement to report on achieving community outcomes.

[25] We are strongly opposed to the repeal of sections 91 and 92 that currently require a council to report separately and thoroughly on the progress made towards achieving community outcomes. We strongly believe that this is a vital form of broad accountability that should be continued. It seems odd that a Bill purporting to improve accountability intends to repeal the accountability provisions of existing legislation without putting up any equivalent or better substitute.

[26] We submit this clause be deleted.

Clause 14: Certain decisions to be taken only if provided for in long-term council community plan.

[27] We are strongly opposed to these repeals of sections 97(1)(c) and (d). These involve the repeal of requirements to include in the long-term plan and therefore consult on constructing, replacing or abandoning strategic assets or decisions that significantly affect the capacity or the cost or level of a service. Such decisions must be made transparently with the community having input into the decision should it so choose. It is inconsistent when consultation is still to be required on transferring an asset and therefore it should be retained for constructing or abandoning an asset.

Clause 17: Requirement for a financial strategy including quantified limits on rates, rate increases and borrowing

[28] We support there being a new section 101A requiring a financial strategy. However we specifically oppose the proposed new section 101A(3)(b)(i), which would require

quantified limits on rates, rate increases and borrowing. We believe it is impracticable, undesirable, and would limit local authorities' ability to respond sensibly to unanticipated events. It is impracticable should a district suffer a tsunami, tropical cyclone, earthquake or other natural emergency or perhaps civil disorder. It is also undesirable should a district be given a unique opportunity to buy or build, or if the community in general develops a genuine enthusiasm for a new community facility or service.

[29] It is also pro-cyclical, and would exacerbate the effects of an economic downturn such as that New Zealand is experiencing at present.

[30] Also, we would like to bring to the Committee's attention the Department of Internal Affairs *Funding Local Government Report: Local Govt Rates Enquiry* of August 2007.[5] This reviewed local government funding comprehensively. A number of recommendations were made regarding the financial management in light of projected budget increases. However there is not a single mention of introducing a fiscal envelope. In fact, the report states, in relation to council funding policies that "the Panel does not favour blunt instruments such as rate capping to achieve this."

Clause 18: re Funding and financial policies

[31] We believe that proposed section 102 (4) and its requirements for a formal consultation on policy should continue to apply to a council's liability management policy and investment policy. The current requirement for a formal consultation on, and explicit policy on partnerships with the private sector should be restored to this section. Communities have an intrinsic interest in whether and on what terms there should be partnerships with the private sector. We submit the existing policy requirement needs to be retained in the Act.

Clause 23: Repeal of requirements relating to policies on partnerships with the private sector

[32] We submit that the requirement, currently in section 107 of the Act, for an explicit policy on any partnerships with the private sector should be restored.

Clause 31: Contracts relating to provision of water services

[33] We are opposed to this provision permitting 35 year contracting out and effectively privatisation of water services for the reasons noted above.[6] Private sector takeovers of water management services have been characterised by:

- rapidly rising costs

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[5] Available http://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Agency-Independent-Inquiry-into-Local-Government-Rates-Index.

6 See also Gassner, Popov & Pushak, 2009, Does private sector participation improve performance in electricity and water distribution? Trends and Policy Options, No 6, p49.

- poor service delivery
- poorer quality water
- reduced services; and
- less accountability.

[34] We submit this clause be deleted.

Clause 32 Joint local government arrangements and joint arrangements with other entities

[35] We are opposed to these arrangements to increase from 15 years to 35 years the provision of joint arrangements with private companies and for the privatisation of water infrastructure. These remove the requirement for local authorities to retain control over the management of water services or the ownership of all the associated infrastructure.

Clause 33 Conditions applying to sale or exchange of endowment property

[36] We are opposed to the repeal of section 141(1)(b). This will remove the exclusion of sales or exchange of endowments from council's long-term plan and mean a much valued community asset gifted to the community can be sold without consultation. This will not improve accountability or transparency.

Clause 47 and Schedule 2

[37] We are opposed to the weakening of long-term council community plans by reducing them to simply long-term plans.