

Submission on the Local Government (Management of Local Authorities) Amendment Bill

Submitter: Councillor Duncan Campbell, Taupō District Council

Note: *AI was used to help prepare this submission*

I make this submission in my personal capacity as an elected member. The views expressed are my own and not necessarily those of Taupō District Council.

Overall position

I support the Bill's objective of strengthening democratic governance and clarifying the respective roles of elected members and chief executives.

However, I submit that the Bill in its present form does not withstand practical scrutiny and requires substantial amendment to be effective.

The Bill identifies a genuine problem: there can be a significant difference between the theoretical authority of elected representatives and their practical ability to direct, scrutinise and control the activities of a local authority.

Proposed section 41B states that council activities must be managed by the chief executive subject to the direction or supervision of the governing body. It also gives the governing body "all the powers necessary" for that purpose. Proposed section 42(3A) repeats the chief executive's obligation to be subject to that direction and supervision.

Those are potentially significant statements. However, the Bill does not explain:

- what "direction" and "supervision" mean;
- how those powers must be exercised;
- whether a formal resolution is required;
- whether a committee may exercise them under delegation;
- what information elected members are entitled to receive;
- how an individual elected member can scrutinise management;
- how alternative advice may be obtained and funded;
- how disagreements between elected members and management are resolved; or
- what remedy exists when a lawful governance direction is not followed.

Without those mechanisms, the amendments risk creating another broadly worded principle that produces further disagreement rather than resolving the present problem.

1. Collective power does not necessarily enable individual scrutiny

The principal powers in proposed section 41B belong to the **governing body collectively**. That is not the same as empowering the mayor and individual councillors to exercise effective oversight.

In practice, an individual elected member may identify a concern but be unable to obtain the information or professional assistance needed to place that concern properly before the governing body. A council majority cannot exercise meaningful supervision if individual members cannot investigate matters and develop informed proposals.

This distinction is especially important where the very matter requiring scrutiny concerns the quality or completeness of information supplied by management.

I recommend that the Bill expressly recognise the right of every elected member to obtain information reasonably necessary to perform their statutory role.

That right could be subject to legitimate restrictions relating to privacy, legal privilege, commercial sensitivity and disproportionate administrative burden. However, any refusal should:

- be made in writing;
- identify the particular legal or practical reason;
- explain whether partial or redacted information can be supplied; and
- provide a process for review.

Without such a provision, the Bill strengthens the governing body in theory while leaving an individual councillor largely dependent upon management for the information needed to persuade that governing body to act.

2. The right to obtain outside advice is incomplete

Proposed section 42(3B) provides that an elected member is not prevented from obtaining advice from someone other than the chief executive.

I support that principle, but the provision is too vague to be effective.

It does not say:

- whether the elected member may use council resources;
- who approves and pays for the advice;
- whether council information may be supplied to the adviser;
- whether the elected member may approach council-employed specialists directly;
- whether the chief executive may restrict those communications; or
- whether the right merely means that a councillor may personally pay for advice from their own resources.

A statutory right that can be exercised only by members able and willing to fund professional advice personally would be unequal and of limited practical value.

The Bill should require every local authority to adopt a transparent policy for elected-member access to independent advice, including reasonable funding arrangements, confidentiality requirements and procedures for providing relevant council information.

3. Effective supervision requires adequate decision-making information

Elected members cannot direct or supervise an organisation effectively if reports do not clearly identify:

- the available options;
- the advantages and disadvantages of each option;
- financial and opportunity costs;
- risks and uncertainties;
- funding implications;
- consultation and significance considerations; and
- alternatives considered but rejected by management.

In my experience, elected members can be presented with reports that recommend a particular outcome without providing a balanced assessment of realistic alternatives. Important information may emerge only if a councillor happens to ask the correct question during the meeting.

That does not provide a satisfactory basis for democratic governance. Elected members should not be expected to discover material information by chance.

If Parliament intends governing bodies to supervise management effectively, the legislation should impose a corresponding duty on the chief executive to ensure that governing-body reports contain sufficient, balanced and reasonably complete information to support informed decision-making.

4. Management decisions made without clear prior governance authority

Another practical problem arises when a significant council activity, service change or public position is announced or implemented administratively without elected members having made - or being clearly shown to have made - the underlying policy decision.

Once an announcement has been made publicly, the governing body may be placed in the position of having to overturn an apparent council decision rather than considering the matter before it occurs.

The Bill should clarify that management remains responsible for implementing governing-body decisions and administering council operations, but may not determine a material new policy position or materially alter a discretionary public service without identifiable governance authority.

This need not involve elected members in minor operational matters. A sensible materiality threshold could be established through legislation, regulations or a mandatory governance-management protocol.

5. The Bill needs a procedure for exercising direction and supervision

The Bill does not specify how the governing body exercises its new powers.

For clarity, it should state that a direction to the chief executive must ordinarily be:

- made by resolution at a properly constituted meeting;
- sufficiently clear and specific to be capable of implementation;
- consistent with legislation and existing statutory obligations; and
- recorded in the minutes.

The chief executive should then be required to report on:

- how and when the direction will be implemented;
- any legal or practical impediment;
- any material cost or risk; and
- completion or non-completion of the direction.

If the chief executive considers a direction unlawful, impossible or inconsistent with an independent statutory responsibility, the chief executive should provide written reasons promptly. The matter should then be returned to the governing body for reconsideration.

This would protect both sides: elected members would know how to give a valid direction, while a chief executive would not be expected to implement an unlawful or unworkable instruction.

6. The boundary between governance and management remains undefined

The Bill says that the governing body may direct and supervise the management of council activities, while retaining the chief executive's independence over employment matters.

However, the Bill gives little guidance about the remaining boundary between governance and operational management.

The phrase "all the powers necessary" is particularly broad. It could be interpreted narrowly and add little to the existing law, or broadly enough to permit extensive governing-body intervention in operational matters.

If Parliament does not define the boundary more clearly, disputes will continue, except that both sides will now rely upon different interpretations of proposed section 41B.

The Bill should distinguish between:

- setting policy and strategic direction;
- approving material changes to council activities;
- monitoring performance and requiring reporting;
- directing reconsideration of an operational approach;
- implementation and day-to-day administration; and
- employment decisions, which should remain with the chief executive.

The legislation should not attempt to prescribe every possible situation, but it should establish clearer principles than the Bill presently provides.

7. Delegations should not defeat governing-body supervision

Local authorities commonly delegate extensive decision-making authority to chief executives and staff. Delegations are necessary for efficient administration, but they should not become practically irreversible or prevent elected members from supervising how those powers are exercised.

The Bill should clarify that, subject to any statutory restrictions, the governing body may:

- review the exercise of delegated powers;
- require reporting about their use;
- amend or revoke delegations prospectively; and
- reserve a matter for governing-body determination before an irreversible decision is made.

This would preserve administrative efficiency while confirming that delegated authority remains democratically accountable.

8. Dispute resolution and enforcement

The Bill provides no practical remedy when the governing body and chief executive disagree about their respective powers.

Employment processes are a blunt and inappropriate first response to most governance disputes. Judicial review is expensive, slow and unrealistic for resolving ordinary disagreements about information, reporting or the implementation of directions.

The Select Committee should consider a proportionate resolution mechanism, which could include:

- an internal written escalation process;
- independent mediation or governance advice;
- referral to an identified oversight agency for an advisory opinion; or
- a statutory process for resolving disputes about information access or compliance with a governing-body direction.

Without a workable resolution process, the practical effect of the new provisions may depend upon which party is most willing to withstand an unresolved conflict.

Recommended amendments

I recommend that the Select Committee amend the Bill to provide:

1. A statutory right for elected members to obtain information reasonably required to perform their role.
2. Written reasons and an independent review process when access to information is refused or restricted.
3. A requirement for councils to adopt an elected-member independent-advice policy, including reasonable funding and access to relevant information.
4. Minimum standards for the completeness and balance of reports presented for governing-body decisions.
5. A clear process by which the governing body may direct the chief executive and monitor implementation.
6. Written reporting when a chief executive considers a direction unlawful, impracticable or inconsistent with an independent statutory duty.
7. Greater clarity about the distinction between governance, supervision and day-to-day administration.
8. Confirmation that governing bodies may review, amend or revoke delegations and require reporting on their exercise.
9. A proportionate mechanism for resolving governance-management disputes.
10. A requirement for each council to adopt and periodically review a governance-management protocol consistent with the Act.

Conclusion

The Bill's objective is worthwhile, but its present drafting largely states a principle without providing the machinery needed to make that principle effective.

The legislation should answer a practical question: **What changes on the first working day after it comes into force?**

I strongly suspect: **not much.**

At present, an individual councillor may still struggle to obtain information, secure alternative advice or scrutinise a matter. A governing body may still be uncertain how to direct the chief executive. A chief executive may still be uncertain where lawful supervision ends and inappropriate operational interference begins. Neither party is given an accessible process for resolving that disagreement.

I therefore support the Bill proceeding, but ask the Select Committee to recommend substantial amendments so that its stated democratic purpose can operate effectively in practice.

I wish to make an oral submission to the Committee.