

Local Government Act 2002 Amendment Act 2004

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Local Government Act 2002 Amendment Act 2004.
- (2) In this Act, the Local Government Act 2002 is called “the principal Act”.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Meaning of council-controlled organisation and council organisation

- (1) Section 6(1) of the principal Act is amended by omitting from paragraph (b) of the definition of **council-controlled organisation** the word “organisation” wherever it occurs, and substituting in each case the word “entity”.
- (2) Section 6(1) of the principal Act is amended by omitting from paragraph (a)(ii) of the definition of **council organisation** the word “organisation”, and substituting the word “company”.
- (3) Section 6(1) of the principal Act is amended by omitting from paragraph (b) of the definition of **council organisation** the word “organisation” wherever it occurs, and substituting in each case the word “entity”.
- (4) Section 6(2) of the principal Act is amended by omitting the word “organisation”, and substituting the word “entity”.
- (5) Section 6(4) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:
“(ca) a company in which a port company (within the meaning of the Port Companies Act 1988) holds or controls 50% of the shares; or”

4 Statements of intent for council-controlled organisations

Section 64(2) and (3) of the principal Act is repealed.

5 Performance monitoring

- (1) Section 65(1)(b) of the principal Act is amended by inserting, before the words “the desired results”, the words “(if applicable)”.
- (2) Section 65(2) of the principal Act is amended by inserting, after the words “statement of intent”, the words “of a council-controlled organisation”.
- (3) Section 65(2)(a) of the principal Act is amended by omitting the words “a council-controlled organisation’s”, and substituting the word “the”.

6 Annual report

Section 67(3) of the principal Act is repealed.

7 New section 71A inserted

The principal Act is amended by inserting, after section 71, the following section:

“71A Application of Part to listed companies

“(1) This section applies to a council-controlled organisation if the shares of any of the following are listed on a stock exchange:

“(a) the-council-controlled organisation:

“(b) a holding company of the council-controlled organisation:

“(c) controlling companies of the council-controlled organisation.

“(2) If subsection (1) applies, the council-controlled organisation is not required to—

“(a) have a statement of intent under section 64:

“(b) deliver a half-yearly report under section 66:

“(c) deliver an annual report under section 67.

“(3) In this section,—

“**controlling companies** means 2 or more companies whose degree of control over a council-controlled organisation, if exercisable by one notional company, would make the notional company a holding company of the council-controlled organisation

“**holding company** has the same meaning as in section 5 of the Companies Act 1993.”

8 New section 72 substituted

The principal Act is amended by repealing section 72, and substituting the following section:

“72 Application of Act to related companies

Sections 57 to 71 apply to a company as if it were a council-controlled organisation if the company is a related company (within the meaning of section 2(3) and (4) of the Companies Act 1993) of a council-controlled organisation.”

9 Compliance with procedures in relation to decisions

Section 79 of the principal Act is amended by adding the following subsections:

- “(3) The nature and circumstances of a decision referred to in subsection (2)(c) include the extent to which the requirements for such decision-making are prescribed in or under any other enactment (for example, the Resource Management Act 1991).
- “(4) Subsection (3) is for the avoidance of doubt.”

10 New section 83A inserted

The principal Act is amended by inserting, after section 83, the following section:

“83A Combined or concurrent consultation

- “(1) Where this Act or any other enactment requires a local authority to use or adopt the special consultative procedure in relation to any decision or matter, it may (but is not required to) carry out the consultation at the same time as, or combined with, any other special consultative procedure that it is required to carry out under this or any other enactment.
- “(2) This section—
 - “(a) applies except to the extent that this Act or any other enactment expressly provides otherwise; and
 - “(b) is for the avoidance of doubt.”

11 Use of special consultative procedure in relation to annual plan

Section 85(2)(c) of the principal Act is amended by omitting the words “that is required by section 89 to be contained in the statement of proposal for the”, and substituting the words “under section 89 in relation to the”.

12 Long-term council community plan

Section 93(9) of the principal Act is amended by omitting the expression “subsection (4)”, and substituting the expression “subsection (8)”.

13 New heading substituted

The principal Act is amended by repealing the heading above section 137, and substituting the following heading:

“Joint local government arrangements and joint arrangements with other entities”.

14 Partnerships and joint ventures

(1) Section 137 of the principal Act is amended by omitting the heading, and substituting the heading “Joint local government arrangements and joint arrangements with other entities”.

(2) Section 137 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) In this section,—

“**joint arrangement** means an arrangement entered into by 1 or more local government organisations with 1 or more bodies that are not local government organisations for the purpose of providing water services or any aspect of a water service

“**joint local government arrangement** means an arrangement entered into by 2 or more local government organisations for the purpose of providing water services or any aspect of a water service.”

(3) Section 137(2)(b) and (3) of the principal Act is amended by omitting the words “joint venture”, and substituting in each case the words “joint local government arrangement”.

(4) Section 137(2)(a), (3), and (4) of the principal Act is amended by omitting the word “partnership” wherever it occurs, and substituting in each case the words “joint arrangement”.

(5) Section 137(3)(c) of the principal Act is amended by omitting the words “to its policy on partnerships adopted under section 102(4)(e)”, and substituting the words “(where relevant) to its policy under section 102(4)(e) (which relates to partnerships between the local authority and the private sector)”.

15 Special requirements for bylaws relating to trade wastes

Section 148 of the principal Act is amended by adding the following subsection:

“(7) The requirements on a territorial authority under this section are in addition to the requirements on the territorial authority

under section 156, but the territorial authority may comply with both sections by using a single process.”

16 Special consultative procedure must be used except in certain cases

Section 156(2)(a) of the principal Act is amended by inserting, after the words “editorial changes”, the words “or amendments to clarify meaning”.

17 Conditions relating to power of search

Section 170(1)(b) of the principal Act is amended by omitting the word “liquor”, and substituting the word “container”.

18 Construction of works on private land

Section 181(1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) the supply by territorial authorities of water by means of reticulated systems:”.

19 Power to restrict water supply

Section 193(1) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

“(ba) fails to comply with any bylaw of the local government organisation that relates to water, water pipes, water-works, water races, or water supply to his or her land or building; or”.

20 Offences relating to water races

Section 228 of the principal Act is amended by repealing paragraphs (b) and (c), and substituting the following paragraphs:

“(b) without being authorised to be supplied with water from a water race, takes water from the supply provided to another person; or

“(c) is supplied with water from a water race and—

“(i) supplies that water to another person who is not authorised to be supplied with water from a water race; or

“(ii) permits another person who is not authorised to be supplied with water from a water race to take water from the water race; or”.

21 Offence of failing to comply with Act

Section 238 of the principal Act is amended by adding the following subsection:

- “(4) In this section **direction** includes a request by a member of the police under section 169(2)(d).”

22 Long-term council community plan

Section 279 of the principal Act is amended by adding the following subsection:

- “(5) Subsections (3) and (4) also apply to amendments made to an adopted long-term council community plan to which subsection (1) applies.”

23 New section 289A inserted

The principal Act is amended by inserting, after section 289, the following section:

“289A Special orders on or after 1 July 2003

- “(1) This section applies—
- “(a) to any power that a local authority is required to exercise by special order under the Local Government Act 1974; and
 - “(b) to an exercise of the power on or after 1 July 2003, and before the commencement of the Local Government Act 1974 Amendment Act 2004.
- “(2) A power is to be treated as having been exercised lawfully, and as having always been exercised lawfully, if subsection (3) or subsection (4) is complied with.
- “(3) This subsection is complied with if—
- “(a) the power has been exercised in accordance with the special order procedure in the Local Government Act 1974 as if the Local Government Act 2002 had not been passed; and
 - “(b) the decision to exercise the power was made in accordance with sections 76 to 83 of the Local Government Act 2002.
- “(4) This subsection is complied with if—

“(a) the power has been exercised in accordance with the special consultative procedure in the Local Government Act 2002; and

“(b) the decision to exercise the power was made in accordance with sections 76 to 83 of the Local Government Act 2002.”

24 Schedule 3 amended

Clause 57(3) of Schedule 3 of the principal Act is amended by omitting the words “sections 31 to 33”, and substituting the words “sections 44 to 46”.

25 Schedule 6 amended

Clause 5(1)(b) of Schedule 6 of the principal Act is amended by omitting the word “ordinary” in both places where it occurs.

26 Schedule 7 amended

(1) Clause 5(1)(d) of Schedule 7 of the principal Act is amended by omitting the words “ordinary meetings”, and substituting the words “meetings (other than extraordinary meetings)”.

(2) Schedule 7 of the principal Act is amended by repealing clause 10 and substituting the following clauses:

“10 Levy regulations for Remuneration Authority costs

“(1) The Governor-General may, by Order in Council (made on the recommendation of the Minister), make regulations prescribing the method by which the Minister responsible for the Remuneration Authority may levy local authorities an annual amount for the purpose of recovering the costs in the previous financial year of the Remuneration Authority, in making determinations under clause 6.

“(2) Regulations made under subclause (1)—

“(a) must specify—

“(i) the date by which the Minister responsible for the Remuneration Authority must set the levy; and

“(ii) the basis on which the amount of the levy is to be calculated for each local authority; and

“(iii) when the levy must be paid; and

“(iv) how the levy is to be notified and collected; and

- “(b) may provide for—
 - “(i) the deduction of over-recoveries for a financial year from a levy payable in subsequent financial years; and
 - “(ii) the addition of under-recoveries for a financial year to a levy payable in a subsequent year.

“10A Minister responsible for Remuneration Authority to set levy

- “(1) The Minister responsible for the Remuneration Authority may, in each financial year, set a levy on local authorities in accordance with any regulations made under clause 10.
- “(2) The levy comes into effect on the 28th day after the date on which the Minister responsible for the Remuneration Authority notifies in the *Gazette*—
 - “(a) his or her intention to set the levy; and
 - “(b) the amount of levy payable by each local authority.
- “(3) The Minister responsible for the Remuneration Authority must notify the Minister of the information required under subclause (2) prior to acting under that subsection.
- “(4) A local authority must pay a levy set under this clause; and any amount of unpaid levy is recoverable in a court of competent jurisdiction by the Crown as a debt due.”
- (3) Clause 19(4) of Schedule 7 of the principal Act is amended by omitting the word “ordinary”.
- (4) Clause 19(5) of Schedule 7 of the principal Act is amended by omitting the words “an ordinary”, and substituting the word “a”.
- (5) Clause 19(6) of Schedule 7 of the principal Act is amended by omitting the word “ordinary”.
- (6) Clause 21(5)(d) of Schedule 7 of the principal Act is amended by omitting the word “ordinary” in both places that it occurs.
- (7) Schedule 7 of the principal Act is amended by omitting clause 24, and substituting the following clause:

“24 Voting

- “(1) The acts of a local authority must be done, and the questions before the local authority must be decided, at a meeting by—
 - “(a) vote; and

- “(b) the majority of members that are present and voting.
- “(2) For the purposes of subsection (1), the mayor or chairperson or other person presiding at the meeting—
- “(a) has a deliberative vote; and
- “(b) in the case of an equality of votes, does not have a casting vote (and therefore the act or question is defeated and the status quo is preserved).
- “(3) An act or question coming before the local authority must be done or decided by open voting.
- “(4) Subsections (1) and (2) apply unless—
- “(a) this Act provides otherwise; or
- “(b) the standing orders of the local authority expressly provide otherwise.”
- (8) Clause 25 of Schedule 7 of the principal Act is amended by revoking subclauses (2) and (3), and inserting the following subclauses:
- “(2) If this clause applies, a local authority or a committee (if the local authority has so directed) must determine by resolution that a person be elected or appointed by using one of the following systems of voting:—
- “(a) the voting system in subclause (3) (**system A**):
- “(b) the voting system in subclause (4) (**system B**).
- “(3) System A—
- “(a) requires that a person is elected or appointed if he or she receives the votes of a majority of the members of the local authority or committee present and voting; and
- “(b) has the following characteristics:—
- “(i) there is a first round of voting for all candidates; and
- “(ii) if no candidate is successful in that round there is a second round of voting from which the candidate with the fewest votes in the first round is excluded; and
- “(iii) if no candidate is successful in the second round there is a third, and if necessary subsequent, round of voting from which, each time, the candidate with the fewest votes in the previous round is excluded; and

- “(iv) in any round of voting, if 2 or more candidates tie for the lowest number of votes, the person excluded from the next round is resolved by lot.
- “(4) System B—
- “(a) requires that a person is elected or appointed if he or she receives more votes than any other candidate; and
- “(b) has the following characteristics:
- “(i) there is only 1 round of voting; and
- “(ii) if 2 or more candidates tie for the most votes, the tie is resolved by lot.”
- (9) Clause 26(6) of Schedule 7 of the principal Act is amended by omitting—
- (a) the word “are” where it first occurs, and substituting the word “is” ; and
- (b) the words “deputy chairperson”, in the last place where they occur, and substituting the words “mayor or chairperson”.
- (10) Clause 30(8) of Schedule 7 of the principal Act is amended by omitting the words “(subject to the law applicable to the committees of that other local authority or public body)”.
- (11) Clause 30 of Schedule 7 of the principal Act is amended by revoking subclauses (9) and (10), and substituting the following subclauses:
- “(9) This Part applies to a joint committee except that—
- “(a) the powers to discharge any individual member and appoint another in his or her stead must be exercised by the local authority or public body that made the appointment; and
- “(b) the quorum at a meeting consists of—
- “(i) half of the members if the number of members (including vacancies) is even; or
- “(ii) a majority of members if the number of members (including vacancies) is odd; and
- “(c) the committee may appoint and remove its own chairperson or deputy chairperson.
- “(10) For the purposes of a public body that is not a local authority, subclauses (8) and (9) apply to the extent that they are not inconsistent with the law applicable to committees of the public body.”

- (12) Clause 32(1)(g) of Schedule 7 of the principal Act is repealed.
- (13) Clause 32(3) of Schedule 7 of the principal Act is amended by inserting, after the words “that makes the”, the word “original”.
- (14) Schedule 7 of the principal Act is amended by inserting, after clause 32, the following clauses:

“32A Delegation of power to issue warrants to enforcement officers

- “(1) A local authority may delegate to a committee or member or officer of the local authority the power to issue warrants to enforcement officers.
- “(2) A delegation under subclause (1) may—
 - “(a) limit or restrict the exercise of the power; or
 - “(b) impose conditions on the exercise of the power; or
 - “(c) prohibit, in specified circumstances, the exercise of the power.
- “(3) The local authority must determine the matters in subclause (2) before acting under subclause (1).
- “(4) Clause 32(2) to (8), with all necessary modifications, applies to a delegation made under this clause.

“32B Delegation of powers by officer

- “(1) An officer of a local authority may delegate to any other officer of the local authority 1 or more of his or her powers under this Act or any other enactment except—
 - “(a) the power to delegate under this section; or
 - “(b) any power delegated to the officer under clause 32 that is subject to a prohibition on delegation; or
 - “(c) any power under an enactment where the enactment expressly prohibits the delegation of the power.
- “(2) An officer acting under subclause (1) may include conditions, limitations, or prohibitions in the delegation.
- “(3) An officer to whom any responsibilities, powers, or duties are delegated may, without confirmation by the officer that made the delegation, exercise or perform them in the like manner and with the same effect as if the officer who made the delegation could himself or herself have exercised or performed them.

- “(4) To avoid doubt, no delegation relieves the officer of the liability or legal responsibility to perform or ensure performance of any function or duty.”

27 Schedule 10 amended

- (1) Clause 4 of Schedule 10 of the principal Act is amended by omitting the words “in which the local authority is a shareholder”.
- (2) Clause 16 of Schedule 10 of the principal Act is amended by omitting the words “in which the local authority is a shareholder”.

28 Schedule 15 amended

- (1) Clause 17(1)(b) of Schedule 15 of the principal Act is amended by omitting the words “on the chairperson or on”, and substituting the words “on the mayor, chairperson, or”.
- (2) Clause 17(2) of Schedule 15 of the principal Act is revoked.
- (3) Clause 17(4) of Schedule 15 of the principal Act is amended by omitting the words “make, levy, and recover rates and charges within the district”, and substituting the words “set, assess, and collect rates and charges within the district or region”.
- (4) Clause 24(4) of Schedule 15 of the principal Act is revoked.
- (5) Clause 24(5) of Schedule 15 of the principal Act is amended by omitting the words “made the special order, special resolution, or”, and substituting the words “used the special consultative procedure or made a”.
- (6) Clause 24(6) of Schedule 15 of the principal Act is amended by omitting the words “make, levy, and recover rates, charges, and assessments within the district and any out-district and to expend the proceeds of the rates, charges, and assessments”, and substituting the words “set, assess, and collect rates and charges within the district or region and expend the proceeds of the rates and charges”.

29 Schedule 16 amended

- (1) Schedule 16 of the principal Act is amended by omitting the item relating to the Land Transfer Act 1952.

(2) Schedule 16 of the principal Act is amended by omitting from the item relating to the Reserves Act 1977, the words “Repeal the second proviso to section 92(2)”.

30 Consequential amendment to Summary Proceedings Act 1957

Part 2 of Schedule 1 of the Summary Proceedings Act 1957 is amended by repealing the item relating to the Local Government Act 1974, and substituting the following item:

Local Government Act 2002	232(2)	Wilful or malicious destruction, damage, stopping, obstruction, or interference with works or property vested in, or under the control of, a local authority
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31 Consequential amendments to District Courts Rules 1992
The District Courts Rules 1992 (SR 1992/109) are amended in the manner indicated in the Schedule.

Schedule
Consequential amendments to District Courts Rules 1992

s 31

Heading to Part 6B

Revoke and substitute:

“Part 6B
“Proceedings under subpart 6 of Part 8 of
Local Government Act 2002”.

Rule 461ZM

Omit the words “Part 43C of the Local Government Act 1974” and substitute the words “subpart 6 of Part 8 of the Local Government Act 2002”

Rule 461ZN

Omit from the definition of the Act the expression “Local Government Act 1974” and substitute the expression “Local Government Act 2002”.

Rule 461ZO(1) and (2)

Omit the expression “Part 43C” in both places where it occurs and substitute in each case the words “subpart 6 of Part 8”.

Rule 461ZP(1)

Omit the expression “section 692ZD” and substitute the expression “section 215”.

Rule 461ZQ(2)(c)

Omit the expression “section 692ZD(4)” and substitute the words “clause 2 of Schedule 14”.

Rule 461ZT(3)

Omit the expression “section 692ZD(4)” and substitute the words “clause 2 of Schedule 14”.

Rule 461ZU

Omit from subclause (1) the expression “section 692ZG(1)” and substitute the expression “section 217(1)”.

Omit from subclause (3) the expression “section 692ZD(4)” and substitute the words “clause 2 of Schedule 14”.

Rule 461ZV(4)

Omit the expression “section 692ZD(4)” and substitute the words “clause 2 of Schedule 14”.

Rule 461ZX

Omit from subclause (1) the words “section 692ZG(3) or section 692ZG(4)(a)” and substitute the words “clause 7 of Schedule 14”

Omit from subclause (2) the words “subparagraph (iii), (iv), or (v) of section 692ZD(5)(a)” and substitute the words “clause 3(a)(iii) to (v) of Schedule 14”.

Omit from subclause (2) the expression “section 692ZG(1)” and substitute the expression “section 217(1)”.

Omit from subclause (5)(a) the expression “Section 692ZG(4)” and substitute the words “clause 7(3) of Schedule 14”.

Omit from subclause (5)(b) the expression “Section 692ZG(5)” and substitute the words “clause 7(4) of Schedule 14”.

Rule 461ZY

Omit the expression “Part 43C” and substitute the words “subpart 6 of Part 8”.

Rule 461ZZA

Omit the expression. “section 692ZK(4)(d)” and substitute the expression “section 221(1)(d)”.

Schedule 1: Form 40H

Omit the expression “Section 692ZD, Local Government Act 1974” and substitute the expression “Section 215, Local Government Act 2002”.

Omit from the note after paragraph 6 the words “section 692ZK(1)(d) of the Local Government Act 1974” and substitute the words “section 220 of the Local Government Act 2002”.

Schedule 1: Form 40I

Omit the expression “Section 692ZF, Local Government Act 1974” and substitute the expression “Clause 6, Schedule 14, Local Government Act 2002”.

Omit from paragraph 3 the words “section 692ZK(4) of the Local Government Act 1974” and substitute the words “section 221 of the Local Government Act 2002”.

Schedule 1: Form 40J

Omit the expression “Section 692ZF, Local Government Act 1974” and substitute the expression “Clause 6, Schedule 14, Local Government Act 2002”.

Schedule 1: Form 40K

Omit the expression “Section 692ZG, Local Government Act 1974” and substitute the expression “Clause 7, Schedule 14, Local Government Act 2002”.

Schedule 1: Form 40L

Omit the expression “Section 692ZK, Local Government Act 1974” and substitute the expression “Section 220, Local Government Act 2002”.

Schedule 1: Form 40M

Omit the expression “Section 692ZK, Local Government Act 1974” and substitute the expression “Section 221(1)(d), Local Government Act 2002”.

Legislative history

29 March 2004	Introduction, (Bill 111-1)
7 April 2004	First reading and referral to the Local Government and Environment Committee
14 June 2004	Reported from the Select Committee (Bill 111-2)
June 2004	Supplementary Order Papers 2004 Nos 230, 227, 232 and 234
29 June 2004	Divided from Local Government Law Reform Bill (No 3), third reading
