



14 September 1999

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Hon Maurice Williamson
Minister of Local Government
Parliament
Wellington

Dear Maurice

Chief Executive Contracts

Further to my letter of 13 September requesting your urgent action to address the issue of local authority chief executive contracts, I enclose two papers which I hope will assist you not only to convince your colleagues of the importance of the matter, but also to expedite it with urgency.

The two papers are:

- Attachment 1, which provides an assessment of the financial and operating implications of the Solicitor General's opinion.
- Attachment 2, which provides the amended wording to the Local Government Act to allow councils to renegotiate employment contracts of their chief executives, following satisfactory performance, without re-advertising. Our legal advisers, Simpson Grierson, have prepared this.

Please let me know if there is anything that I or *Local Government New Zealand* can do to assist you in making the above changes as soon as possible.

Yours sincerely

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Attachment 1

The Re-Appointment of Local Authority Chief Executives

The recent opinion of the Solicitor General (3 September 1999) argues that local authorities are required to notify a vacancy in the office of chief executive at least once every five years. This view, which the Office of the Auditor General is required to adhere to, effectively conflicts with the practice followed over the past ten years by the majority of local authorities when re-negotiating employment contracts with their chief executives.

If the opinion is not successfully challenged, or if the legislation is left unchanged, councils will be forced to change the way in which they approach the employment and re-employment of their chief executives. Although the opinion brings local authority chief executives into a similar, although less favourable, regime to that which applies to central government chief executives; there are significant differences in the environments in which they operate. The most important difference is the role of the State Services Commission that employs and oversees the framework in which central government executives operate. Local authority chief executives lack the degree of security and the level of assistance provided by the Commission.

The effect of this opinion on the sector is likely to be significant and detrimental. For example:

- **Availability of qualified applicants**

An additional effect of increased uncertainty is likely to be a reduction in the number of qualified and experienced people prepared to put themselves forward for service. The possibility that employment may only be for five years will discourage people from applying for positions, especially given the political nature of the role.

- **Free and frank advice**

The likelihood of having to go through the application process every five years may also make existing chief executives risk averse, and discourage them from providing “free and frank” advice or being too innovative. The desire to avoid controversy may mean that chief executives will be more conscious of not offending important political groupings or factions on their councils.

- **Instability**

The lack of certainty for chief executives as to whether their employment will be ongoing, regardless of performance, and for councils as to whether their chief executive will be retained, will lead to periods of managerial and political instability which will ultimately affect each council’s performance. In these situations chief executives may seek out alternative employment towards the end of their contracts in response to the possibility (however remote) that they may not be successful in re-applying for their positions. They are also likely to feel somewhat humiliated in

going through the process of reapplying for their own positions, as the public may assume that the incumbent's performance is at issue.

- **Increased salary costs**

Most chief executive contracts are based on an assumption that the contract will be re-negotiated at the end of its term, given satisfactory performance. Our advice, received from human resource consultants, suggests that councils will be required to pay an annual salary premium of between 10% and 20% as compensation for the reduced job security.

- **Increased politicisation**

The possibility of chief executives' positions becoming vacant every five years may encourage greater politicisation, with political groupings seeking opportunities to influence the selection process to find chief executives whose views are seen to align more closely with their own. Although chief executives are politically neutral, it is not uncommon for them to be associated with the political directions of their council by those with opposing views. This may also extend to attempts to find chief executives whose personalities are more acceptable to the majority of elected members, on who will reflect certain political views.

- **Pressure for additional payments**

The reality of reduced security and increased politicisation will lead to calls for special "one-off" payments for chief executives who fail to be re-employed. There is currently a campaign in the United Kingdom to have "one-off" payments (modeled on those available for football club managers) instituted to assist local authority chief executives who have lost their positions for reasons of personality rather than performance. The initiative is recognition of the uncertainty facing chief executives, especially when faced with new councils committed to changing their organisation's culture.

- **The costs of advertising**

The average cost of advertising for a chief executive position is estimated to be between \$25,000 and \$30,000. If all eighty six authorities are required to notify a vacancy at least once every five years the cost to the sector would be in the order of \$2m. This would be additional to the costs of fulfilling vacancies caused by retirement of resignations during the five-year period.

- **Parliament's intentions**

The relevant provisions of the Local Government Act, Part VIA, s 119E, were drafted and adopted before the State Sector Act became law, and consequently the wording and provisions lack the clarity that the later statute displays. It is at best unclear as to whether or not Parliament envisaged the Solicitor General's interpretation, and consciously sought to limit the employment of local authority chief executives to periods of no more than five years without re-advertising.

Conclusion

Arguments have been made to the effect that local authority chief executives should operate under the same framework as central government chief executives. However, there are a number of significant differences in the environments in which they work. Central government chief executives have the benefit of the State Services Commission that not only employs them, but also ensures their employment is governed by a professional framework. This requires that specific procedures and processes are implemented to govern not only the manner of their employment, but also performance review and Ministerial relationships.

Local authority chief executives have no equivalent body. Chief executives are employed directly by their councils - a more political process than that which occurs in central government. It is also a more uncertain process, as there are no standard procedures or processes other than those prescribed in the Employment Contracts Act and relevant statutes. This exposes local authority chief executives to a greater degree of uncertainty than that faced by their central government colleagues, especially at election time, as there is no "neutral" body that sits between them and their new councils.

Having considered the financial costs to the sector, and its consequences for the effectiveness and professionalism of councils, *Local Government New Zealand* has adopted the following resolution. "That the Minister of Local Government amend, with urgency, the appropriate statutes to allow councils to renew chief executive contracts without re-advertising on completion of satisfactory five years service."

Amending the legislation to legitimize the practice of the last 10 years will not only maintain the stability of the sector, but also address the differences between the operating environment in which local authority chief executives work, and that which operates for central government chief executives.

Attachment 2

LOCAL GOVERNMENT AMENDMENT BILL

EXPLANATORY NOTE

This Bill amends the Local Government Act 1974 to clarify the position in respect of the reappointment of local authority chief executives.

Clause by Clause Analysis

Clause 1 contains the title and commencement provision.

Clause 2 inserts a new provision into Part VIA of the Local Government Act 1974. It provides that if current chief executives and senior executive officers are reappointed under section 119C of the principal Act, there is no need to notify the impending vacancy in their positions under section 119I before the reappointment takes place.

Clause 3 contains a validation provision. It makes it clear that if a chief executive or senior executive officer has been reappointed before this Bill comes into force, those persons are deemed to be, and to have always been, validly reappointed despite any failure to notify the impending vacancy. It also makes it clear that nothing which those persons have done in their capacity as local authority chief executives is deemed to be invalid by reason only of the way in which they were reappointed.

LOCAL GOVERNMENT AMENDMENT BILL

ANALYSIS

1. Title Short Title and commencement	2. New section inserted 3. Validation of chief executive reappointments
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A BILL INTITLED

An Act to amend the Local Government Act 1974

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement-(1) This Act may be cited as the Local Government Amendment Act 1999, and is part of the Local Government Act 1974 (“the principal Act”).

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

2. New section inserted-The principal Act is amended by inserting, after section 1191, the following section:

“1191A. **Reappointment of chief executives-**Despite section 1191, a local authority may reappoint any person appointed under section 119C of this Act for a further term without first notifying the impending vacancy.”

3. Validation of chief executive reappointments-(1) This section applies to any person who was reappointed under section 119C of the principal Act in the period beginning on 1 November 1989 and ending with the commencement of this Act.

(2) **To** avoid any doubt, any person to whom this section applies is deemed to be, and to have always been, validly reappointed despite any failure to notify the vacancy or impending vacancy in that person’s office.

(3) **To** avoid any doubt, nothing done by a person to whom this section applies in the discharge of that person’s responsibilities, is deemed to be invalid by reason only of the way in which he or she was reappointed.