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Local Government and Environment Select Committee
Parliamentary Buildings
Wellington 6011

To the Local Government and Environment Select Committee

Re: Submission on the Local Government Act 2002 Amendment Bill (No 2)

Thank you for the opportunity to provide comment on the Local Government Act 2002 Amendment Bill (No 2) (the Bill).

The Bill introduces a set of reforms intended to improve service delivery and infrastructure provision arrangements at the local government level. The reform will adapt local authorities' governance arrangements and structures. The Bill provides for a broader range of functions to be transferred between local authorities, joint governance arrangement for areas of common or shared interest, and greater use of joint council-controlled organisations for providing services. The Local Government Commission's powers will also be increased.

Summary

The Bill introduces significant local government reforms. We comment on specific governance and director matters related to new types of council-controlled organisations (CCOs).

We request clearer definitions of these new types of CCOs including in relation to multiply owned substantive CCOs. The Bill requires shareholders of multiply owned substantive CCOs to establish a joint committee to collectively manage their interests in performing or exercising their responsibilities, duties, and powers as shareholders. We invite further clarity about the composition of joint committees and the relationship between committees and boards of multiply owned substantive CCOs and how they will operate.

The Bill proposes to prohibit a person being both a director of a multiply owned substantive CCO, and also a member of the governing body, a local board, or a community board of a local authority that is a shareholder in that CCO. We have highlighted issues with this proposal. Most importantly, this may prevent skilled and experienced directors, who are members of the boards above, from being directors of multiply owned substantive CCOs. We encourage the consideration of a mechanism to allow such directors to be appointed to boards of multiply owned substantive CCOs in exceptional cases.

About the Institute of Directors

The IoD is a non-partisan voluntary membership organisation committed to raising governance standards in all areas of business and society in New Zealand. We represent a diverse membership of over 7,500 members drawn from NZX-listed corporations, private companies, small to medium enterprises, public sector organisations, not-for-profits and charities.

Our chartered membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good corporate governance.

Governance of multiply owned substantive CCOs
The Bill introduces new types of CCOs including substantive, multiply owned, transport and water services CCOs. The definitions of these new CCOs in the Bill could be more clearly drafted. For example when will a substantive CCO be a multiply owned substantive CCO (as referred to in s 56W)?

Joint committees
Clause 22 introduces s 56W. This section requires (subject to an exception) the shareholders of a multiply owned substantive CCO to establish a joint committee to collectively manage their interests in performing or exercising their responsibilities, duties, and powers as shareholders.

Under the section, the shareholders of a multiply owned substantive CCO (that establishes a joint committee) must delegate to the committee the following responsibilities, duties and powers:

- the adoption of a policy on the appointment of directors under s 57(1) (discussed below)
- the approval of the service delivery plan or infrastructure strategy
- the adoption of an accountability policy
- the specification of shareholder requirements and expectations under sections dealing with accountability policies and any additional accountability requirements

Committees are responsible for making recommendations to shareholders about persons to be appointed as directors of CCOs.

Comment
Having a joint committee of shareholders may be a practical way to collectively manage shareholder interests. As it is currently framed, joint committees do not appear to be able to direct CCOs (which would be inappropriate from a governance perspective).

We invite further clarity about the composition of joint committees (eg will they consist of elected members of shareholding local authorities) and the operational relationship between committees and boards of multiply owned substantive CCOs.

Appointment of directors
Section 57(1) of the Local Government Act 2002 requires local authorities to have a director appointment policy for:

- the identification and consideration of skills, knowledge, and experience required of directors of a council organisation
- the appointment of directors to a council organisation
- the remuneration of directors

Local authorities may only appoint directors if the person has the skills, knowledge and experience to guide the organisation (given the nature and scope of its activities) and contribute to the achievement of the objectives of the organisation (s 57(2)).

Clause 23 of the Bill amends s 57 (by inserting s 57(3) and (4)). Section 57(3) provides that a local authority must not appoint a person to be a director of a multiply owned substantive CCO if the person is:

- a member of the governing body of a shareholding local authority
- a member of a local board or community board of a shareholding local authority.

A director of a multiply owned substantive CCO who is elected to be a member of the governing body, a local board, or a community board, of a shareholding local authority must resign from his or her position as a director of the CCO before taking up his or her position as an elected member (s 57(4)).

Comment
The amendment prohibits a person being both a director of a multiply owned substantive CCO, and also a member of the governing body, a local board, or a community board of a local authority that is a shareholder in that CCO.

We understand this may be to address the risk that once one local authority has appointed a director to a multiply owned substantive CCO, all shareholding local authorities could expect to appoint a director. This could lead either to excessively large boards and/or to boards lacking a suitable range of skilled independent directors.

In theory, s 57(3) and (4) should not be necessary. This is because if a local authority acts in accordance with s 57(1) and (2), the board of a CCO should comprise a diverse range of people who bring a balance of skills, knowledge and experience to the organisation. This was also noted in a recent Auditor-General report. The report also stated "that appointing elected members to CCO boards should be the exception". It did not say, however, that elected members should not be directors of CCOs.

There are a number of issues with the amendment including:

- it may prevent skilled and experienced directors (who are members of the governing body, a local board, or a community board of a local authority that is a shareholder) from being directors of multiply owned substantive CCOs. Organisations need balanced boards, with skilled and experienced directors, for optimal performance (especially public sector organisations governing significant services and assets such as substantive CCOs).

- it may make it more difficult, in some regions, to find skilled and experienced directors who:
    - understand local issues and
    - are not a member of the governing body, a local board, or a community board of a local authority that is a shareholder

- shareholders may instead of appointing persons who are members of the governing body, a local board, or a community board of a local authority that is a shareholder, appoint their CEO or seniors managers (similar to what happens in private joint ventures). This may give rise to similar issues with respect to board size and composition.

We encourage the consideration of a mechanism whereby suitably qualified directors who are members of the governing body, a local board, or a community board of a local authority that is a shareholder can be appointed to the board of a multiply owned substantive CCO in exceptional cases.

Conclusion
We request clearer definitions of the new types of CCOs. We also request further clarity about the composition of joint committees under s 56W and the relationship between committees and boards of multiply owned substantive CCOs and how they will operate.

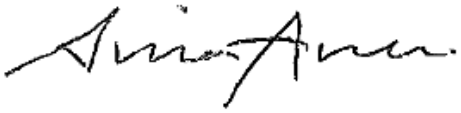
We have highlighted issues with the proposed amendment to appointing directors. Most importantly, this may prevent skilled and experienced directors (who are members of the governing

body, a local board, or a community board of a local authority that is a shareholder) from being directors of multiply owned substantive CCOs. We encourage the consideration of a mechanism to allow such directors to be appointed to boards of multiply owned substantive CCOs in exceptional cases.

We also encourage directors of local government related boards to continue to undertake education and improve their governance skills and knowledge to lift the standard of governance in the public sector.

The IoD appreciates the opportunity to make a submission on behalf of its members.

Yours sincerely



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