



18 June 2010

Committee Secretariat
Local Government and Environment
Parliament Buildings
Wellington

Dear Secretariat

I attach the submission from the Public Health Association of New Zealand on the Local Government Act 2002 Amendment Bill 2010.

The Public Health Association would like to make an oral submission when the Committee is considering submissions.

Yours sincerely

Dr GM Keating
National Executive Officer



Submission on the Local Government Act 2002 Amendment Bill 2010

Who are we?

The Public Health Association of New Zealand (PHA) is a charity which provides a major forum for the exchange of information and stimulation of debate about public health in New Zealand. Membership of PHA is open to individuals interested in public health. Members may be employed in the public, private and voluntary sectors. In addition to membership fees, donations and other earnings, the PHA has a contract with the Ministry of Health to encourage and facilitate informed debate on key public health issues. The PHA is a member of the World Federation of Public Health Associations.

Public health is defined as the improvement of the health of the whole population '*through the organised efforts of society*' (Acheson, 1988).

Our involvement with the Local Government Act

PHA members and regional branches regularly engage with local authorities, in relation to the Local Government Act 2002, or other Acts over a broad range of issues that determine the health of people and communities. Many PHA members in their professional capacity as public health practitioners contribute their scientific understanding of the interactions between the environment and human health to Council considerations. Public health practitioners have input to assist Councils to ensure that consent applicants comply with health standards, provide evidence-based information to aid decisions, and ensure effects are monitored to minimise any potential health risks to the public.

The PHA and public health practitioners also provide submissions on the plans and policy statements of territorial and regional authorities as they relate to public health. Local government, in its role as a place-shaper and service provider/enabler, has a far greater influence on preventing ill health and promoting community wellbeing than any other agency. Relationships between public health agencies and practitioners with local councils are fundamental to influencing and addressing public health matters at the local government level.

Executive Summary and Key Recommendations

Local government is a key part of New Zealand's infrastructure for health. There are many health-related statutory responsibilities of local authorities, in addition to the Local Government Act 2002. Some of the proposals in the Local Government Act 2002 Amendment Bill 2010 will prejudice the ability of local government to carry out their responsibilities under other statutes.

Some of the proposals in the Bill appear to conflict with the stated purpose or principles of the Local Government Act. No amendments to an Act should diminish the ability of agencies to comply with the fundamental purpose of the base Act.

Recommendations

There should be no reduction of the obligation of local authorities to consult with their communities.

The current definition and handling of Community Outcomes in the LGA should be retained.

There should not be a list of core council services. If, however, there is to be such a list,

- Core services should cover all of the statutory responsibilities of Councils, not just those apparent under the LGA
- There should be further consultation on the nature of core services.

There should not be a defined fiscal envelope for local authorities.

The current definition of Long Term Council Community Plans in the LGA should be retained.

The greater linkage of Community Outcomes Long Term Council Community Plans is supported. It should be extended to require local authorities to plan for and report on outcomes, not just service levels.

Health and Health Equity impact statements should be required, if there is to be funding impact statement.

If councils wish to enter into water supply agreements as provided for in the Bill, the Bill should require that they should first carry out health and health equity impact analysis on the potential impacts of the removal of council management of water services.

Any changes to decrease the involvement of the local authority in the provision of water should be accompanied by the insertion of an explicit obligation on councils to ensure adequate, affordable, sustainable supplies of safe water.

1 Health and Local Government

It is impossible to overstate the significance of Local Government to human health. The first public health legislative response of New Zealand was in 1872, when powers to control disease were given to local authorities. The statutory health role of local authorities has continued, unbroken, since then.

Currently Councils are responsible for basic services that are essential for good health for the public under fundamental legislation - the Health Act 1956, the Food Act 1981 and the Building Act 1991. Many other statutes also give responsibilities to local authorities.

Historically, the public health role of Council focused on sanitation and food safety- the control of infectious diseases by having a healthy physical environment. However the Health Act 1956 imposes on Councils a general duty to improve, promote, and protect public health.

Social, economic, environmental and cultural well-being and health

Promoting the social, economic, environmental, and cultural well-being of communities, in the present and for the future is the purpose of the Council (as spelt out in the Local Government Act 2002).

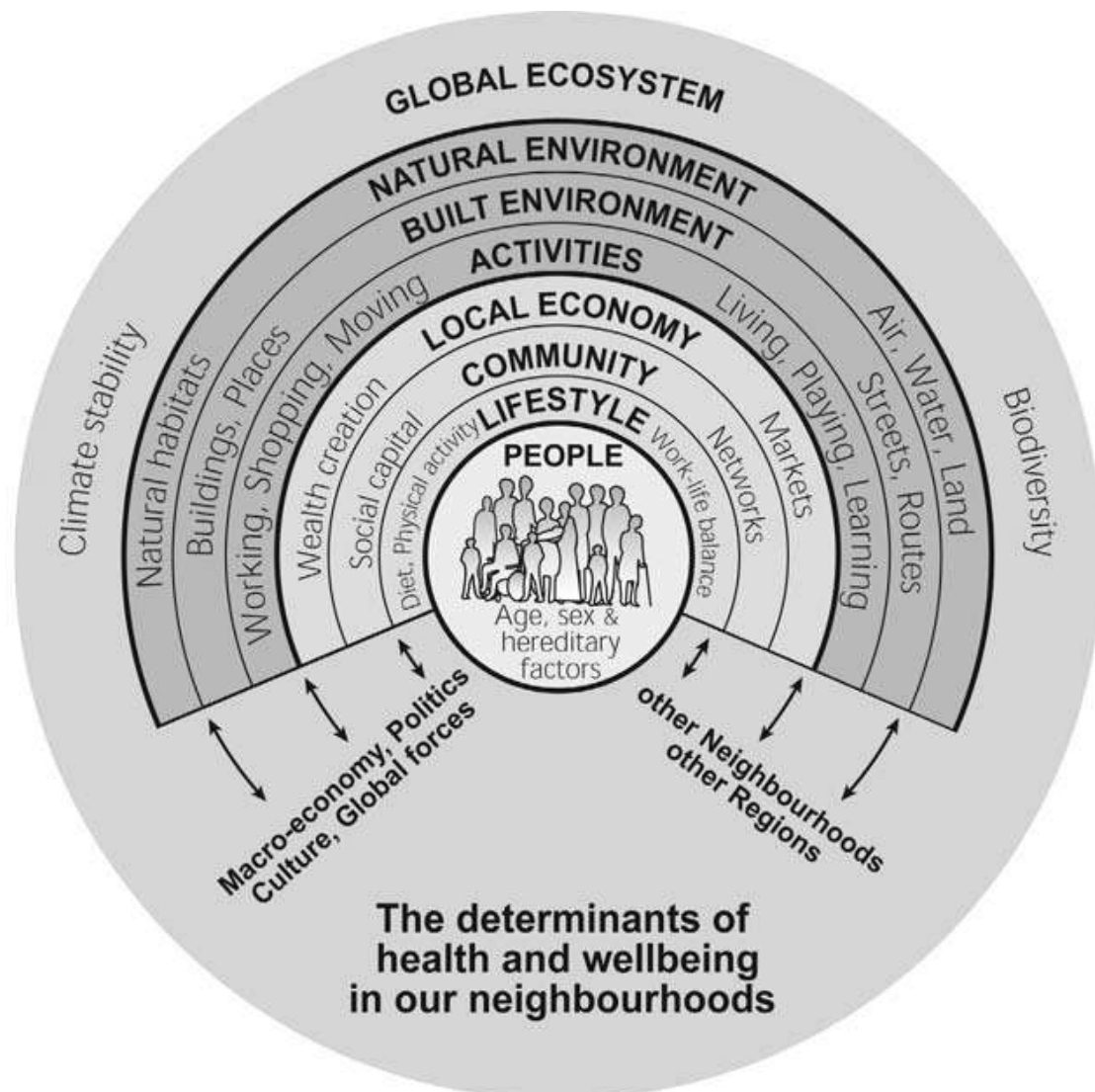
These same social, economic, environmental and cultural factors affect health. A report for the World Health Organisation (WHO)ⁱ says that the circumstances in which people grow, live, work and age, and the related social and economic policies determine health, life and death. The fairness of these circumstances also determines if ill health and early death will fall unequally in a city, district or country. Decisions by Councils can either help make all people healthy, or can make some parts of town bad to live in and have more illness and premature death.

Neighbourhoods and health

The University of the West of England, Bristol is a WHO Collaborating Centre. Their specialty is Healthy Cities and Urban Policy. They remind us that “Modern planning originated in reaction to the unhealthy conditions of nineteenth century cities.”

The need to plan for healthy Cities, districts and regions has not gone away in the past century, and will continue into the future. Local authority decisions make a big impact on the major causes of avoidable illness and deaths, such as cancer, infectious diseases, injuries and heart disease.

The WHO Collaborating Centre for Healthy Cities and Urban Policy offer the following diagram as a framework to understand the linkages between neighborhood environments and human healthⁱⁱ.



In the New Zealand context, the following table notes some of the health issues that are significantly affected by decisions of local authoritiesⁱⁱⁱ.

Disease	Risk or support factors for health	Council decisions and activities
Injuries	Roads and foot paths	Planning, maintenance and enforcement
Respiratory diseases, including asthma	Air pollution	Standard setting and enforcement
Alcohol –related harm	Density of outlets	Planning and enforcement
Food poisoning, skin infection, respiratory infections	Commercial premises hygiene, housing supply and standards	Service provision
Heart disease	Physical activity	Enforcement
High Blood pressure		Planning, including road layout and safety, parks and open spaces, transport planning
Cancer		Land use
Depression		residential/commercial
Cancer	Diet	
Heart disease		
Diabetes		

2 Improving Māori health

Māori health is less good than the health of other New Zealanders^{iv}. Councils can play a big part to improve Māori health and make New Zealand a fairer place. In particular, Local Government can ensure effective Māori participation in Local Authority processes. Māori input, participation and culture can be further valued and recognised as part of the norm of the community.

The Bill is a lost opportunity, in that it does not make any proposals that will result in improved Māori health. Indeed, the proposals restrict participation overall in the local government processes.

The Bill has a direct impact upon public participation and the ability of the community to become involved in resource management processes. Within the wider population, the provisions of the Bill will have a disproportionate impact upon Māori interests.

If minority, and often marginalised, community groups and diverse sections of the population are excluded from local authority decision making, the utilisation of Treaty of Waitangi models of maintaining effective working relationships, as well as government aspirations of effective community engagement, are further undermined.

And it is not only Māori who will benefit; from the international evidence, all New Zealanders can expect better outcomes if our health is more fair. Health equity (fairness) contributes to the safety and wellbeing of citizens^v.

3 General Comments on the Bill

The PHA is very pleased to see increased quality of local authority decision making by improving clarity, transparency and accountability.

However it is quite unacceptable to make any changes to the LGA that could compromise councils' ability to play their part to improve, promote and protect human health under the LGA or other Acts.

Councils exist for their communities (LGA ss3, 10). The proposals in the Bill that remove community participation, desired community outcomes and even remove the word "community" from the name of Council long term plans are in opposition to the purpose of the LGA.

LGA and health-related legislation

The LGA establishes councils and specifies a range of processes that councils must undertake, such as consultation and planning processes.

However the LGA is not the only law that poses obligations on councils. Legislation providing for the public health roles and duties for local authorities includes the:

- Building Act 2004
- Food Act 1981
- Hazardous Substances and New Organisms Act 1996
- Health Act 1956
- Land Transport Management Amendment Act 2008
- Resource Management Act 1991
- Sale of Liquor Act 1989
- Waste Minimisation Act 2008

Change to the LGA processes, as proposed by the Bill, will impede the ability of councils in fulfilling their obligations under other legislation.

A failure to adequately consider health implications by Councils will result in the re-emergence of preventable illness and premature deaths. A further minor implication is the costs for individuals, and opportunity costs on District Health Boards that must divert resources from waiting-list surgery to treat these preventable illnesses.

A defined fiscal envelope, a narrow definition of core activities, reduction of consultation and a narrowing of desired outcomes will prejudice the ability of Councils to improve, promote and protect human health, as they are obliged to do under the Health Act and other statutes.

Future focus and sustainability

The Bill appears to force councils to adopt a short-sighted approach contrary to the purpose and principles of the LGA.

In particular now community outcomes relate to current or future well-beings; the Bill would remove the reference to the future.

Along with the proposals that narrow the focus of council activity that will restrict the ability of councils to improve health (narrowing of community outcomes, focus on LGA-only “core services”, narrowing of LTCCPs) it appears that the overall intent of the Bill is to cost-shift to future generations.

4 Changes to community outcomes and requirement for community consultation – repeal of sections 91 and 92.

Democratic local decision making and action

The first purpose of the LGA is to enable democratic local decision making and action by, and on behalf of, communities.

The Bill openly limits the general public's ability to participate.

Now that the LGA has been in place eight years there is opportunity to widely review the effectiveness of the current consultation processes, and legislate for changes if necessary. To date, there does not seem to have been evidence produced, based on reliable, published research to support the changes proposed in the Bill. We consider it likely that the existing provision could be streamlined and improved, but substantive changes should be based on reliable information.

Restricting public participation in this manner is an approach that challenges local and central government commitments to improving community engagement and communication. It also conflicts with central government's role to safeguard individual rights in a participatory democracy.

The erosion of public participation has a disproportionate impact upon Māori interests. The Bill will make it more difficult for Māori to participate in, and challenge, post-consultative decisions. Such changes are contrary to the principles of the Treaty of Waitangi of partnership, participation and protection. These principles support the reduction of inequalities.

Restricting consultation is contrary to the declared purpose of the main Act (ss3 and 10).

Participation and health

The WHO asks all countries and societies to “Empower all groups in society through fair representation in decision-making about how society operates, particularly in relation to its effect on health equity, and create and maintain a socially inclusive framework for policy-making^{vi}”.

The WHO report goes on to note:

“The right to the conditions necessary to achieve the highest attainable standard of health is universal. ...

Social inequity manifests across various intersecting social categories such as class, education, gender, age, ethnicity, disability, and geography. ...

People who are already disenfranchised are further disadvantaged with respect to their health – having the freedom to participate in economic, social, political, and cultural relationships has intrinsic value. Inclusion, agency, and control are each important for social development, health, and well-being.

And restricted participation results in deprivation of human capabilities, setting the context for inequities in, for example, education, employment, and access to biomedical and technical advances.”

Put simply, the WHO report tells us that the proposal to limit citizen participation is bad for health.

Community outcomes

The second declared purpose of the LGA (ss3 and 10) is for councils to play a broad role in their communities, promoting well-being in the present and into the future.

The underlying feature of the current Community Outcomes process is in line with both the purposes of the LGA. The current process is for the community to inform the Council of the outcomes that the community seeks. Then Councils can act to achieve those desired well-being outcomes.

The proposal appears to turn this process on its head, so that Councils tell the community of things the Council has decided to aim to achieve.

5 Definition of core services

The Bill identifies a “need” for councils to focus on a defined list of “core services”. Again, there does not seem to have been evidence produced, based on reliable, published research to support the “need” for a list of services.

If, however Parliament decides that there should be a list of core services there needs to be substantial further work on defining the list. Key elements are missing from the list in the Bill. Ensuring safe drinking water and the enforcement of health-related standards are crucial council activities that do not rate a mention in the list of core service in the Bill.

Broad role for well-being now and into the future

The second declared purpose of the LGA (ss3 and 10) is for councils to play a broad role in their communities, promoting well-being in the present and into the future.

The broad role of councils includes, but is far from limited to the provision or purchase of services by councils themselves.

An important role that some forward-thinking councils have taken is to provide leadership and a platform for cooperation across sectors. Thriving communities have many aspects. Some aspects are commercial and manufacturing, some are philanthropic, some are central government, others family/whanau/hapū based. Under the LGA purpose, a broad role for councils includes options to facilitate dialogue across these sectors and groups. This can be in response to a community crisis, or proactively to enhance the success of the community.

Health responsibilities of local authorities

It is essential for the roles of local authorities to be broad, as in the purpose statement of the LGA. This is necessary if the local authorities are to fulfil their health obligations. In particular, the Health Act 1956 places an obligation on local authorities to improve, promote, and protect public health. A requirement for local government to focus on “core services” will not support local authorities to carry out their statutory responsibilities under the Health 1956 Act and other health-related Acts.

6 Operation within a defined fiscal envelope

We do not support the concept of a defined fiscal envelope.

One of the key features of the LGA is the focus on current and future needs, and sustainability. Many health-related infrastructure services (water, sewerage) are very expensive and have a life far longer than any elected Councillor.

Imposing a defined fiscal envelope on councils will mean an even greater tendency for councils to defer maintenance and replacement. This simply means additional costs at a later stage. Deferring expenditure until one’s children are rate-payers is an unjustifiable intergenerational transfer of costs.

A defined fiscal envelope limits the ability of local government to respond to changing and diverse community needs. Bad times, whether from natural disaster, economic or social disruption, are not readily predictable. A pre-defined fiscal envelope restricts the democratic local decision making and action by councils, should they need to respond.

7 Local Government Plans

Who are these plans for?

The original name of “long-term council community plans (LTCCP)” was clear. The name reminded Councils and citizens that the plans were democratic local decision making and action on behalf of their communities.

The focus of plans on the community is in line with the democratic purpose of Councils; the focus on the long term is in line with the LGA principle of sustainable development.

These plans should not be constricted by the proposed changes. Such a narrow approach restricts the ability of councils to act in the best interests of the health of people into the future.

Long term plans should continue to be called long-term council community plans.

Linkage of LTCCPs and Community Outcomes

Greater and more explicit linkage of LTCCPs is an excellent change and will encourage greater accountability.

The community outcomes process is the way by which local communities express their desired outcomes. The LTCCPs are the way by which the councils describe the local decision making and action on behalf of their communities to achieve those outcomes.

Many communities have included a range of health issues in their community outcomes. Improved linkage between Community Outcomes and LTCCPs is likely to promote greater health and improved health equity.

Service levels, performance measures and targets

The requirements that long term plans should give service levels, performance measures and targets are too limited.

Councils should plan and report on outcomes, not simply on services delivered. In particular the plans and reports should focus on what is achieved by the council in relation to the four well-beings, and be linked explicitly to desired community outcomes.

Greater transparency – a key purpose of the Bill - can be achieved by linking the desired community outcomes, through the planning process, to the reporting process. Thus citizens will be able to see the extent to which, over time, councils are achieving what the communities seek.

Impact statements

The mechanism of a “funding impact statement” should be broadened.

From a health perspective, the amendment Bill is an opportunity to act on the advice of the WHO Collaborating Centre for Healthy Cities and Urban Policy, the WHO itself,^{vii} and more locally, on the advice of the Public Health Advisory Committee^{viii}. All these bodies have recommended that policies (including those of local government) should be assessed for the impact that they have or could have on health. They also advise that the assessment look carefully at the likely health impact on different group- health equity assessment.

Council activities should be explicitly assessed for their impact on well-being, and this assessment should be reported upon. This is not new as the principles relating to local authorities in the LGA (s14 (1)(c)) require councils to take impact on well-being and diversity into account. However the requirement for prudent, open financial stewardship is also included in the principles relating to local authorities in the LGA (s14 (1)(g)).

If there is a need for greater assessment of financial impact for transparency than councils currently provide, under s14(1), then there is at least as great a need for health and health equity assessment . There are well-established models for health and health equity impact assessment that are also cost-effective.

8 Water services

The PHA does not have a position on contracts and water services. However the provision of adequate, affordable, sustainable supplies of safe water is a critical issue for health.

The new provisions in the Bill which enable Councils to extend their contracts with private companies from 15 years to 35 years are a significant change as are the requirements that remove councils' control of the managements of water services . The provision of water is a basic fundamental human right and a public health concern.

Any changes to decrease the involvement of the local authority in the provision of water should be accompanied by the insertion of an explicit obligation on councils to ensure adequate, affordable, sustainable supplies of safe water.

A health and health equity impact analysis should be undertaken on the potential impacts of the removal of council management of water services. The potential for unintended consequences is high and the precautionary principle should be adopted.

ⁱ http://www.who.int/social_determinants/en/ accessed 9 June 2010

ⁱⁱ <http://www.bne.uwe.ac.uk/who/researchthemes.asp> accessed 17 June 2010

ⁱⁱⁱ Predominantly sourced from Public Health Advisory Committee. 2010. *Healthy Places, Healthy Lives: Urban environments and wellbeing*. Wellington: Ministry of Health.

^{iv} *Decades of Disparity* series, 2003-2006, Ministry of Health, Wellington

^v Wilkinson, R. G., & Pickett, K. E. (2006). Income inequality and population health: A review and explanation of the evidence. *Social Science & Medicine* (1982), 62(7), 1768-1784.

Wilkinson, R. G., & Pickett, K. E. (2009). *The Spirit Level: Why More Equal Societies Almost Always Do Better*. London: Penguin (Allen Lane)

^{vi} Op cit

^{vii} Op cit

^{viii} <http://www.phac.health.govt.nz/moh.nsf/indexcm/phac-idea-whose-time-has-come>